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FOREWORD

In order to make the living, or jurisprudential, Constitution, which is set out in numerous final acts of the Constitutional Court, more easily encompassable and more convenient to apply, the Constitutional Court of the Republic of Lithuania presents the second supplemented compilation of the selected provisions of the official constitutional doctrine. These provisions are presented in a systematised way, without repeating those that were consequently considerably developed or became irrelevant following the entry into force of the respective constitutional amendments.

The official constitutional doctrine developed by the Constitutional Court, as a source of the perception of the Constitution, gradually and consistently reveals the essence and content of the text of the Constitution. In this way, the constitutional jurisprudence ensures the necessary dynamics of constitutional relationships, in other words, the viability of the Constitution and, at the same time, its stability. Assessing the compliance of legal acts with the Constitution and performing other constitutional powers conferred on it, the Constitutional Court has interpreted the Constitution and developed the broad official constitutional doctrine, revealing the content of various constitutional provisions, their interrelations, the balance of constitutional values, and the essence of the constitutional regulation as a whole. The formation and development of the official constitutional doctrine will never be fully completed. This doctrine has continued to be considerably developed over the last four years since the first compendium *Selected Official Constitutional Doctrine (1993–2016)* was published.

Thus, this book – *Selected Official Constitutional Doctrine (1993–2020)* – supplements the preceding compilation with the most significant official constitutional doctrine developed in the final acts of the Constitutional Court adopted from 2017 to 31 August 2020. During this period, 1 September 2019 was of particular significance for the development and even modification of the official constitutional doctrine – since this date, the institution of individual constitutional complaints has been consolidated in the Constitution. As of 1 September 2019, every person has the right to apply to the Constitutional Court in order to contest the laws of the Republic of Lithuania or other acts adopted by the Seimas, the acts of the President of the Republic, or the acts of the Government if a decision adopted on the basis of these acts has violated the constitutional rights or freedoms of the person and the person has exhausted all other effective legal remedies. During the first year of the application of the institution of individual constitutional complaints, the Constitutional Court managed to reveal the purpose and content of this institution as an effective instrument

for the protection of human rights, as well as developed the practice of the admissibility of individual constitutional complaints. The interpretation of the conditions and procedure for application by natural and legal persons to the Constitutional Court is undoubtedly important not only for the legal practice, but also to the general public.

The period of the last almost four years is also memorable because of the equally significant development of the official constitutional doctrine in other directions. The Constitutional Court has more than once dealt with various issues that are not unequivocally assessed in society and the legal community and are important both to the state as a whole and to every citizen. Developing the official constitutional doctrine on such issues, the Constitutional Court has been a leader in the advancement of society and an arbitrator in specific disputes. Such a role of the Constitutional Court derives from its constitutional mission to protect not only the letter of the Constitution, but also the values consolidated therein, as well as to administer constitutional justice and ensure constitutional lawfulness.

In recent years, the ruling of 30 July 2020 has undoubtedly been the act of the Constitutional Court of most significance for Lithuanian constitutional law and the foundations of the statehood of Lithuania. In that ruling, the Constitutional Court, for the first time, clarified the nature of the fundamental constitutional acts of the State of Lithuania, which are the Resolution of the Council of Lithuania of 16 February 1918 – the Act of Independence of Lithuania (along with the Resolution of the Constituent Assembly (Seimas) of 15 May 1920 on the re-established democratic State of Lithuania), the Act of the Supreme Council of the Republic of Lithuania of 11 March 1990 on the Re-establishment of the Independent State of Lithuania, and the Declaration of the Council of the Lithuanian Freedom Fight Movement of 16 February 1949, as well as interpreted the significance of these acts for the Constitution. From the point of view of the Constitution of 25 October 1992, the fundamental constitutional acts of the State of Lithuania are pre-constitutional constituent (restorative) acts, adopted by the supreme institutions that represented the People and expressed the will of the People to establish (restore) the independent democratic State of Lithuania; therefore, the Constitution itself arises from these acts. As the primary sources of Lithuanian constitutional law, the fundamental constitutional acts of the State of Lithuanian may never be altered or repealed. They consolidate the fundamental principles of the constitutional order of Lithuania – independence, as well as democracy, from which the innate nature of human rights and freedoms is inseparable; these principles are unamendable and have supra-constitutional force.

It is with one of the said fundamental principles of the constitutional order, i.e. democracy, that also other most prominent acts of the Constitutional Court that were

adopted in recent years and enriched the official constitutional doctrine can be associated. Democracy is inconceivable without respect for human dignity. In its conclusion of 19 December 2017 and ruling of 11 January 2019, the Constitutional Court emphasised that only a state that respects the dignity of each person can be considered genuinely democratic. The Constitution is an anti-majoritarian act; it protects the individual, regardless of the attitudes or stereotypes prevailing in a certain period of time among the majority of members of society. Therefore, the Constitution prohibits such discriminatory conduct degrading human dignity (no matter how it would at times be tolerated in society) as harassment, including sexual harassment. Moreover, it would be impossible to ensure respect for the dignity of every person (and, at the same time, the equality of all persons) if the list of the grounds of prohibited discrimination in the text of the Constitution were to be seen as exhaustive. Therefore, under the Constitution, discrimination cannot be justified, including on such grounds not specified in the text of the Constitution as the age, gender identity, or sexual orientation of a person. In view of this, private and family life under the Constitution is defended in the same way, regardless of whether the family is created by opposite-sex or same-sex persons. This jurisprudence of the Constitutional Court can provide a solid basis for cultivating western-level tolerance in Lithuania.

As already previously emphasised by the Constitutional Court on more than one occasion, under the Constitution, Lithuania is a pluralistic democracy. Without political pluralism, democracy would turn into the dictatorship of the majority. Over recent years, the concept of a pluralistic democracy has been supplemented with several elements.

First, freedom of the media, which is guaranteed under the Constitution, has been noted to be one of the necessary foundations of a pluralistic democracy (ruling of 16 May 2019). This freedom, however, is incompatible with the dissemination of information disrupting the foundations of a pluralistic democracy, including with constitutionally prohibited disinformation, which has intensified in recent years (dissemination of false or misleading information organised, among others, abroad in order to manipulate the public, thus inflicting damage on the values protected and defended by the Constitution), as well as with war propaganda (incitement, again often by foreign media, to aggression in the area of international relations). It is no coincidence that fight against disinformation and war propaganda is today on the agenda of the European Union and NATO and many of their member states. In its ruling of 16 May 2019, the Constitutional Court held that, also under the Constitution of Lithuania, the state has the duty to take effective measures, including through the national public broadcaster, against the dissemination of the above-mentioned information.

Second, Lithuania has been defined as a pluralistic parliamentary democracy (ruling of 18 December 2019), the essential element of which is the parliamentary minority (opposition). The mission of the parliamentary opposition is to propose an alternative political programme, compared to that of the parliamentary majority, and political decisions based on this programme, as well as to monitor the political activity of the parliamentary majority and criticise it, thereby guaranteeing political pluralism in the parliament of a democratic state under the rule of law and creating the preconditions for such a parliament to fulfil its functions. Therefore, the effective protection of the rights of the parliamentary opposition and the guarantees of its activity are necessary, while certain decisions on organising the work of the parliament cannot be dictated by the majority alone.

In addition, democracy is impossible without lawmaking consistent with the principles of democracy, especially without publicity and transparency in legislation. Only a legislative procedure that meets the said requirements can involve the public in the governance of the state, ensure the proper consideration of the opinion of specialists in the fields concerned, and thus create the preconditions for guaranteeing the legitimacy and quality of the adopted laws. Therefore, the adoption of laws under urgency or special urgency procedure, where the possibilities of ensuring the proper deliberation of draft laws are minimal, is possible under the Constitution only in exceptional cases in the absence of any other possibility of avoiding greater damage to constitutional values. This is the essence of the ruling of the Constitutional Court of 16 April 2019, after which the conveyor belt of the adoption of laws under urgency and special urgency procedure was halted. Before this ruling of the Constitutional Court, displeasingly, Lithuania had stood out from other European states as a result of the number of laws adopted under the said simplified procedure.

Furthermore, democracy is incompatible with corruption, which is the opposite to the transparency and publicity of the activity of state institutions and officials. The Constitutional Court had to note that corruption, among other things, has a negative material and moral effect on the political and economic system of the state, undermines the authority of state institutions and the authority of all state service, encourages disrespect for laws, creates the preconditions for violating human rights, and erodes the trust of the public in the state, its institutions, the democratic governance of the state, and law; thus, corruption destroys the constitutional foundations of a democratic state under the rule of law. Therefore, under the Constitution, the state must take all possible measures to prevent corruption and the abuse of power in state service (ruling of 18 April 2019). One of such measures can be responsibility provided for in the criminal law for illicit enrichment (ruling of 15 March 2017).

As more than once emphasised by the Constitutional Court, democracy is also incompatible with privileges. The Constitutional Court had to reiterate in at least a few cases in recent years that the Constitution is an act on the equality of citizens, but not on privileges. For instance, it was held in the ruling of 4 July 2017 that the neutrality and secularity of the state means, among other things, that, under the Constitution, the religion professed by a person may not constitute a basis for exempting the person from the constitutional duties of a citizen to the state; therefore, under Paragraph 2 of Article 139 of the Constitution, the status of a priest of a church or religious organisation does not provide a basis for exempting the person from his constitutional duty as a citizen to perform military or alternative national defence service. In its ruling of 8 March 2018, the Constitutional Court held that, in the absence of the provisions of the Constitution that would be other than those that provide for the immunity of ministers where criminal responsibility or the restriction of their liberty is applied and would establish the exclusive status of ministers compared with other subjects, there is no reason to hold that, under the Constitution, ministers are subject to the rules of legal responsibility that are different from those applied to other persons. In similar vein, it was held in the ruling of 9 March 2020 that judges may not be unreasonably singled out from society and have privileges prohibited under the Constitution: the purpose of the constitutionally consolidated immunity of judges is to guarantee the independence of judges so that the administration of justice is ensured; the immunity of judges is not consolidated for the purpose of creating the preconditions for judges to avoid criminal or other legal responsibility for criminal acts or other violations of law. Therefore, the procedural measures that are provided for by means of laws and do not in themselves restrict the physical liberty of a person and are necessary for the speedy disclosure and thorough investigation of criminal acts and other violations of law should be applied to judges on the same grounds as with respect to other persons. In other words, the immunity of judges established by means of a law cannot be broader than that consolidated in the Constitution, which requires the consent of the Seimas or the President of the Republic in order to hold a judge criminally responsible or detain him/her, or to restrict his/her liberty otherwise.

These are just a few examples showing the relevance and diversity of the cases decided by the Constitutional Court in recent years. It is important to note that, if some of the provisions of the official constitutional doctrine are not included in this publication, this should not in itself inspire the idea that their significance is constitutionally less considerable or that they are not relevant at all. Only the Constitutional Court itself can state in its acts that the interpretation of the Constitution may no longer be based on a certain previously developed official constitutional doctrine.

This volume maintains a structure that has already become common and is based on the structure of the Constitution itself and the order in which the constitutional legal institutions are conventionally arranged in constitutional legal science. The parts of the book (chapters, subchapters) and the fragments of the official constitutional doctrine are given the headings reflecting the content they introduce, and the provisions of this doctrine are set out in chronological order. It is also important to know that the provisions collected in the book are excerpts from the acts of the Constitutional Court and cannot be considered official texts of these acts.

I hope that this book will be interesting and useful not only to lawyers working in various fields or future lawyers, but also to everyone wishing to gain greater knowledge and understanding of the living Constitution.

Prof. Dr. Dainius Žalimas
President of the Constitutional Court

1. THE FOUNDATIONS OF THE CONSTITUTIONAL ORDER

The foundations and protection of the constitutional order of the Republic of Lithuania

The Constitutional Court's ruling of 23 November 1999

The constitutional order of the Republic of Lithuania is based on the priority of the rights and freedoms of individuals and citizens as the ultimate value, as well as on the principles establishing the sovereignty of the Nation, the independence and territorial integrity of the state, democracy, the republic as the form of government, the separation of powers, their independence and balance, local self-government, etc. The protection of the constitutional order means that it is not permitted that the social, economic, and political relations established in the Constitution, which constitute the foundations of the life of individuals, society, and the state, be encroached upon.

[...]

... the Constitution does not assign the function of protecting the constitutional order to any single institution of state power. This is a constitutional obligation of all the institutions of state power (Seimas, the President of the Republic, the Government, and the judiciary) and other state establishments and organisations. This obligation derives not only from particular laws, but primarily from the constitutionally established principle of a state under the rule of law and the requirement that the Constitution must be followed, complied with, not violated, and protected. Of course, every institution of state power protects the constitutional order only by means of the activity forms characteristic of it and only on the grounds of the powers assigned to it by the Constitution and laws.

1.1. THE FUNDAMENTAL PRINCIPLES OF THE STATE OF LITHUANIA: NATIONAL INDEPENDENCE, THE SOVEREIGNTY OF THE NATION, DEMOCRACY, AND THE REPUBLIC AS THE FORM OF GOVERNMENT

1.1.1. The fundamental principles of the State of Lithuania

The fundamental principles of the State of Lithuania (Article 1 of the Constitution)

The Constitutional Court's decision of 19 November 2012

Article 1 of the Constitution prescribes: “The State of Lithuania shall be an independent democratic republic.” It needs to be noted that Article 1 of the Republic of Lithuania’s Constitutional Law on the State of Lithuania – a constituent part of the Constitution – stipulates that the phrase “The State of Lithuania shall be an independent democratic republic”, i.e. the provision of Article 1 of the Constitution, is a fundamental principle of the state.

While interpreting the provision of Article 1 of the Constitution, the Constitutional Court has held that this article of the Constitution consolidates the fundamental principles of the State of Lithuania: the State of Lithuania is an independent democratic republic; the republic is the form of government of the State of Lithuania; state power must be organised in a democratic way; and there must be a democratic political regime in this country (rulings of 23 February 2000, 18 October 2000, 6 December 2000, 25 January 2001, 19 September 2002, the conclusion of 5 November 2004, and the rulings of 13 December 2004 and 21 June 2011); the provisions of Article 1 of the Constitution, as well as the principle of a state under the rule of law, established in the Constitution, determine the main principles of the organisation and activities of the state power of the State of Lithuania (rulings of 18 October 2000, 25 January 2001, 29 March 2012, and 2 May 2012).

Thus, Article 1 of the Constitution consolidates the fundamental constitutional values – the independence of the state, democracy, and the republic. They are inseparably interrelated and form the

foundation of the State of Lithuania as the constitutionally consolidated common good of all society; therefore, they may not be denied under any circumstances.

The continuity of the State of Lithuania and its constitutional identity

The Constitutional Court's ruling of 22 February 2013

The Act of the Supreme Council of the Republic of Lithuania of 11 March 1990 on the Re-establishment of the Independent State of Lithuania, *inter alia*, established that the execution of the sovereign powers of the State of Lithuania, abolished by foreign forces in 1940, is re-established, and henceforth Lithuania is again an independent state; the Act of Independence of 16 February 1918 of the Council of Lithuania and the Resolution of the Constituent Seimas of 15 May 1920 on the re-established democratic State of Lithuania have never lost their legal power and comprise the constitutional foundation of the State of Lithuania; the territory of Lithuania is integral and indivisible, and the constitution of no other state is valid on it.

It needs to be noted that:

– from the provisions “the execution of the sovereign powers of the State of Lithuania, abolished by foreign forces in 1940, is re-established, and henceforth Lithuania is again an independent state” of the Act of 11 March 1990, it is obvious that the restoration of the independence of the State of Lithuania was based on the continuity of the State of Lithuania, which means that the aggression that the USSR began against the Republic of Lithuania on 15 June 1940 (*inter alia*, the occupation and annexation of the territory of the Republic of Lithuania) did not end the existence of the State of Lithuania as a subject of international law or its sovereign powers; due to the occupation of the territory of Lithuania and the destruction of its state institutions, the implementation of the sovereign powers of the State of Lithuania, *inter alia*, its international rights and obligations, was suspended; the annexation of the territory of the Republic of Lithuania perpetrated by the USSR on 3 August 1940, as a continuation of the aggression, was an act that was null and void; thus, from the viewpoint of international law, the territory of the Republic of Lithuania was occupied by another state and it was never a legal part of the USSR;

– from the provisions “the 16 February 1918 Act of Independence of the Council of Lithuania and the 15 May 1920 Resolution of the Constituent Seimas on the re-established democratic State of Lithuania have never lost their legal power and comprise the constitutional foundation of the State of Lithuania” of the Act of 11 March 1990, it is obvious that not only the continuity of the State of Lithuania, but also its identity, is stated: having restored its independence, the Republic of Lithuania, from the viewpoint of international law and constitutional law, is a subject of law identical to the State of Lithuania against which the aggression of the USSR was perpetrated on 15 June 1940; such constitutional identity of the State of Lithuania is confirmed, *inter alia*, by the Republic of Lithuania's Law of 11 March 1990 on the Reinstatement of the Constitution of Lithuania of 12 May 1938;

– from the provision of the Act of 11 March 1990 that the constitution of no other state is valid on the territory of the Republic of Lithuania, it is obvious that the introduction of the validity of the constitution of any other state (*inter alia*, the USSR), *inter alia*, the imposition of the duties established by such a constitution on the citizens of the Republic of Lithuania, was unlawful.

The constitutional values that form the foundation of the State of Lithuania

The Constitutional Court's ruling of 24 January 2014

Article 1 of the Constitution consolidates the fundamental constitutional values – the independence of the state, democracy, and the republic; they are inseparably interrelated and form the foundation of the State of Lithuania as the constitutionally consolidated common good of all society; therefore, they must not be denied under any circumstances (decision of 19 December 2012).

In its decision of 19 December 2012, the Constitutional Court noted that the principle of the recognition of the innate nature of human rights and freedoms should also be regarded as a fundamental constitutional value that is inseparably related to the constitutional values – the independence of the state, democracy, and the republic – that constitute the foundation of the State of Lithuania as the constitutionally

consolidated common good of all society; the innate nature of human rights and freedoms may not be denied, either.

... under the Constitution, it is not permitted to make any such amendments to the Constitution that would deny at least one of the constitutional values that constitute the foundation of the State of Lithuania as the constitutionally consolidated common good of all society – the independence of the state, democracy, the republic, and the innate nature of human rights and freedoms, with the exception of the cases where Article 1 of the Constitution would be altered in the manner prescribed by Paragraph 1 of Article 148 of the Constitution, or Article 1 of the Constitutional Law on the State of Lithuania, which is a constituent part of the Constitution, would be altered in the manner prescribed by Article 2 of this law.

It should be noted that the fundamental constitutional values consolidated in Article 1 of the Constitution – the independence of the state, democracy, and the republic – are closely interrelated with the geopolitical orientation of the State of Lithuania, which is consolidated in the Constitution and implies European and transatlantic integration pursued by the Republic of Lithuania.

The continuity of the State of Lithuania and its constitutional identity

The Constitutional Court's ruling of 18 March 2014

... in its ruling of 22 February 2013, the Constitutional Court emphasised that the provisions “the execution of the sovereign powers of the State of Lithuania, abolished by foreign forces in 1940, is re-established, and henceforth Lithuania is again an independent state” of the Act of 11 March 1990 make it clear that the restoration of the independence of the State of Lithuania was based on the continuity of the State of Lithuania, which means that the aggression that the USSR began against the Republic of Lithuania on 15 June 1940 (*inter alia*, the occupation and annexation of the territory of the Republic of Lithuania) did not end the existence of the State of Lithuania as a subject of international law or its sovereign powers; due to the occupation of the territory of Lithuania and the destruction of its state institutions, the implementation of the sovereign powers of the State of Lithuania, *inter alia*, its international rights and obligations, was suspended; the annexation of the territory of the Republic of Lithuania perpetrated by the USSR on 3 August 1940, as a continuation of the aggression, was an act that was null and void; thus, from the viewpoint of international law, the territory of the Republic of Lithuania was occupied by another state and it was never a legal part of the USSR. In the same ruling, the Constitutional Court also held that, from the provisions “the 16 February 1918 Act of Independence of the Council of Lithuania and the 15 May 1920 Resolution of the Constituent Seimas on the re-established democratic State of Lithuania have never lost their legal power and comprise the constitutional foundation of the State of Lithuania” of the Act of 11 March 1990, it is obvious that not only the continuity of the State of Lithuania, but also its identity, is stated: having restored its independence, the Republic of Lithuania, from the viewpoint of international law and constitutional law, is a subject of law identical to the State of Lithuania against which the aggression of the USSR was perpetrated on 15 June 1940; from the provision of the Act of 11 March 1990 that the constitution of no other state is valid on the territory of the Republic of Lithuania, it is obvious that the introduction of the validity of the constitution of any other state (*inter alia*, the USSR), *inter alia*, the imposition of the duties established by such a constitution on the citizens of the Republic of Lithuania, was unlawful.

In its ruling of 22 February 2013, the Constitutional Court also noted that the continuity of the State of Lithuania gives rise to the continuity of citizenship of the Republic of Lithuania, which, *inter alia*, implies that, from the viewpoint of international law and Lithuanian constitutional law, the imposition of USSR citizenship on the citizens of the Republic of Lithuania in 1940, as a consequence of the aggression of the USSR, was an act that was null and void; thus, this act was not a legal ground to lose citizenship of the Republic of Lithuania; consequently, during the years of the Soviet occupation, the citizens of the Republic of Lithuania (persons who held citizenship of the Republic of Lithuania on 15 June 1940 and their descendants) were also not bound by the unlawfully imposed obligations related to USSR citizenship. In addition, the Constitutional Court recalled that the imposition of citizenship of an occupying state on the

population of the occupied territory and the forced conscription of this population into the military service of the occupying state is forbidden under the universally recognised norms of international law ...

Thus, in this context, it should also be noted that, according to the universally recognised norms of international law, the citizens of the Republic of Lithuania had an inalienable right to resist the aggression of another state, *inter alia*, the Soviet occupation; the organised armed fight by the citizens of the Republic of Lithuania in 1944–1953 against the Soviet occupation should be assessed as the self-defence of the State of Lithuania.

Consequently, in view of the fact that the aggression of the USSR was carried out against the Republic of Lithuania, also in view of the continuity of the State of Lithuania and the continuity of citizenship of the Republic of Lithuania, the organised armed partisan forces should be regarded as the armed forces of the Republic of Lithuania that resisted the occupation, i.e. as volunteer forces of a party to an international armed conflict, whose members have the status of a combatant. ...

In this context, it should be noted that, in its ruling of 22 February 2013, the Constitutional Court held that service to the State of Lithuania was possible only in the structures (*inter alia*, in the Lithuanian Freedom Fight Movement) of the organised armed resistance against the occupation, which took place for a certain time in the occupied territory of the Republic of Lithuania.

The prohibition on denying the constitutional provisions consolidating the constitutional values that form the foundation of the State of Lithuania

The Constitutional Court's ruling of 11 July 2014

... the innate nature of human rights and freedoms, democracy, and the independence of the state are such constitutional values that constitute the foundation for the Constitution as a social contract, as well as the foundation for the Nation's common life, which is based on the Constitution, and for the State of Lithuania itself. No one may deny the provisions of the Constitution consolidating these fundamental constitutional values, since doing so would amount to the denial of the essence of the Constitution itself. Therefore, even where regard is paid to ... limitations on the alteration of the Constitution, which stem from the Constitution itself, it is not permitted to adopt any such amendments to the Constitution that would destroy the innate nature of human rights and freedoms, democracy, or the independence of the state; if the Constitution were interpreted in a different way, it would be understood as creating the preconditions for abolishing the restored "independent State of Lithuania, founded on democratic principles", as proclaimed by the Act of Independence of Lithuania of 16 February 1918.

The fundamental constitutional acts of the State of Lithuania (Act of Independence of 16 February 1918 of the Council of Lithuania, the Act of the Supreme Council of the Republic of Lithuania of 11 March 1990 on the Re-establishment of the Independent State of Lithuania, and the Declaration of the Council of the Lithuanian Freedom Fight Movement of 16 February 1949)

The Constitutional Court's ruling of 30 July 2020

... from the point of view of the Constitution of 25 October 1992, the fundamental constitutional acts of the State of Lithuania – the Resolution of the Council of Lithuania of 16 February 1918 – the Act of Independence (along with the Resolution of the Constituent Assembly (Seimas) of 15 May 1920 on the re-established democratic State of Lithuania), the Act of the Supreme Council of the Republic of Lithuania of 11 March 1990 on the Re-establishment of the Independent State of Lithuania, and the Declaration of the Council of the Lithuanian Freedom Fight Movement of 16 February 1949 – are pre-constitutional constituent (restorative) acts, adopted by the supreme institutions that represented the People and expressed the will of the People to establish (restore) the independent democratic State of Lithuania. Therefore, these fundamental constitutional acts of the State of Lithuania, as the primary sources of Lithuanian constitutional law, may never be altered or repealed.

... the provisions of the fundamental constitutional acts of the State of Lithuania that consolidated and implemented the unamendable fundamental constitutional principles – independence, democracy, and the innate nature of human rights and freedoms – have supra-constitutional force; they may not be denied by

any constitution of the State of Lithuania. On the contrary, the Constitution, as supreme law, enshrines and unconditionally protects these constitutional values. If the Constitution were interpreted in a different way, as mentioned before, the preconditions would be created for abolishing the restored “independent State of Lithuania, founded on democratic principles”, as proclaimed by the Act of Independence of 16 February 1918.

It should be noted that other fundamental provisions that are consolidated in the fundamental constitutional acts of the State of Lithuania and express the constitutional traditions of the State of Lithuania are implemented in the Constitution adopted in the referendum of 25 October 1992, after the People had chosen the specific content and specific verbal form for the provisions of this Constitution. The constitutional traditions of the State of Lithuania, which are reflected in the Constitution, may be developed and altered in accordance with the procedure laid down in the Constitution for amending its provisions.

As held by the Constitutional Court, from the date of the entry into force of the Constitution, the Lithuanian national legal system had to be created and developed only on the basis of the Constitution (*inter alia*, the rulings of 13 May 2005, 7 September 2010, and 15 March 2011). Thus, the Lithuanian legal system must be created and developed, *inter alia*, on the basis of those provisions of the Constitution adopted by the citizens of Lithuania in the referendum of 25 October 1992 that derive from the fundamental constitutional acts of the State of Lithuania and reflect the constitutional traditions of the State of Lithuania, expressed in these fundamental acts. When these provisions of the Constitution are interpreted, account should be taken, *inter alia*, of their nature – the will and aspirations of the People, expressed in the fundamental constitutional acts of the State of Lithuania, which are the source of this will and aspirations.

A fundamental constitutional act of the State of Lithuania – the Act of Independence of 16 February 1918 of the Council of Lithuania

The Constitutional Court’s ruling of 30 July 2020

The main fundamental constitutional act of the above-mentioned fundamental constitutional acts of the State of Lithuania is the Resolution of the Council of Lithuania of 16 February 1918 (Act of Independence), which is of a constituent nature and by which the Council of Lithuania, acting “as the sole representative of the Lithuanian nation, in conformity with the recognised right to national self-determination”, proclaimed “the restoration of the independent state of Lithuania, founded on democratic principles, with Vilnius as its capital”, and declared “the termination of all state ties that formerly bound this State to other nations”.

The Constitutional Court has held that the Act of Independence of 16 February 1918 of the Council of Lithuania is the constitutional foundation of the State of Lithuania (rulings of 22 February 2013 and 18 March 2014). It should be underlined that the Act of Independence of 16 February 1918 established the modern State of Lithuania as a subject of international law; it also consolidates the unamendable fundamental principles of the constitutional order of Lithuania – independence, as well as democracy, from which the innate nature of human rights and freedoms is inseparable. As stressed by the Constitutional Court, the innate nature of human rights and freedoms, democracy, and the independence of the state are such constitutional values that constitute the foundation for the Constitution as a social contract, the foundation for the People’s common life, which is based on the Constitution, and the foundation for the State of Lithuania itself; no one may deny the provisions of the Constitution that consolidate these fundamental constitutional values, since doing so would amount to the denial of the essence of the Constitution itself; therefore, it is not permitted to adopt any such amendments to the Constitution that would destroy the innate nature of human rights and freedoms, democracy, or the independence of the state; if the Constitution were interpreted in a different way, it would be understood as creating the preconditions for abolishing the restored “independent State of Lithuania, founded on democratic principles”, as proclaimed by the Act of Independence of 16 February 1918 (ruling of 11 July 2014).

Thus, the constitutions of the State of Lithuania, *inter alia*, the Constitution adopted by the citizens of Lithuania in the referendum of 25 October 1992, derive from the Act of Independence of 16 February 1918. It should be noted that the unamendable fundamental constitutional principles of the Act of Independence

of 16 February 1918 – independence, democracy, as well as the innate nature of human rights and freedoms, which is inseparable from democracy, are consolidated in Article 1 of the Constitution.

It should be noted in this context that, along with the Act of Independence of 16 February 1918, the Resolution of the Constituent Assembly (Seimas) of 15 May 1920 on the re-established democratic State of Lithuania, which declared the State of Lithuania a democratic republic, also forms the constitutional foundation of the State of Lithuania. Moreover, this Resolution of the Constituent Assembly (Seimas) implemented the provision of the Act of Independence of 16 February 1918 that the foundation of the State of Lithuania must be finally determined by the Constituent Assembly (Seimas).

Thus, the Resolution of the Constituent Assembly (Seimas) of 15 May 1920 on the re-established democratic State of Lithuania derives from the Act of Independence of 16 February 1918. This Resolution consolidates the fundamental provision that the form of government of the State of Lithuania is a republic. It should be pointed out that this fundamental provision and the unamendable fundamental principles of the constitutional order of Lithuania as they are enshrined in the Act of Independence of 16 February 1918 are laid down in Article 1 of the Constitution, stipulating that “The State of Lithuania shall be an independent democratic republic”.

In addition, it should be noted that the Act of Independence of 16 February 1918 contains the fundamental provision that the capital of the State of Lithuania is Vilnius. This fundamental provision, expressing the constitutional tradition of the State of Lithuania, is set out in Article 17 of the Constitution, which stipulates that “The capital of the State of Lithuania shall be the city of Vilnius, the long-standing historical capital of Lithuania”.

A fundamental constitutional act of the State of Lithuania – the Act of the Supreme Council of the Republic of Lithuania of 11 March 1990 on the Re-establishment of the Independent State of Lithuania

The Constitutional Court’s ruling of 30 July 2020

Another fundamental constitutional act of the State of Lithuania is the Act of the Supreme Council of the Republic of Lithuania of 11 March 1990 on the Re-establishment of the Independent State of Lithuania, which is a restorative act, by which the Independence of the Republic of Lithuania was restored.

By the Act of 11 March 1990 on the Re-establishment of the Independent State of Lithuania, the Supreme Council of the Republic of Lithuania, expressing the will of the People, decreed and solemnly proclaimed that “the execution of the sovereign powers of the State of Lithuania abolished by foreign forces in 1940 is re-established, and henceforth Lithuania is again an independent state”; in this Act, it is stated that “The Act of Independence of 16 February 1918 of the Council of Lithuania and the Resolution of 15 May 1920 of the Constituent Assembly (Seimas) on the re-established democratic State of Lithuania never lost their legal effect and comprise the constitutional foundation of the State of Lithuania”.

Thus, the Act of 11 March 1990 on the Re-establishment of the Independent State of Lithuania derives from the Act of Independence of 16 February 1918 and implements the unamendable fundamental constitutional principles enshrined therein – independence, democracy, and the innate nature of human rights and freedoms; the Act of 11 March 1990 on the Re-establishment of the Independent State of Lithuania also derives from the Resolution of the Constituent Assembly (Seimas) of 15 May 1920 on the re-established democratic State of Lithuania and implements the fundamental provision consolidated in this Resolution that the State of Lithuania is a democratic republic. The Constitutional Court has held that the provisions of the Act of 11 March 1990 on the Re-establishment of the Independent State of Lithuania make it clear that this Act states not only the continuity of the State of Lithuania, but also its identity (rulings of 22 February 2013 and 18 March 2014).

In view of this, it should be held that the Constitution adopted by the citizens of Lithuania in the referendum of 25 October 1992 derives not only from the Act of Independence of 16 February 1918 (along with the Resolution of the Constituent Assembly (Seimas) of 15 May 1920 on the re-established democratic State of Lithuania), but also from the Act of 11 March 1990 on the Re-establishment of the

Independent State of Lithuania. It should be noted that, implemented by the Act of 11 March 1990 on the Re-establishment of the Independent State of Lithuania, the unamendable fundamental constitutional principles – independence, democracy, and the innate nature of human rights and freedoms, as enshrined in the Act of Independence of 16 February 1918, and the fundamental provision that the State of Lithuania is a democratic republic, as proclaimed in the Resolution of the Constituent Assembly (Seimas) of 15 May 1920 on the re-established democratic State of Lithuania, are consolidated in Article 1 of the Constitution, which provides that “The State of Lithuania shall be an independent democratic republic”. It should also be noted that Article 1 of the Constitution must be interpreted in the light, *inter alia*, of the continuity of the state and its constitutional identity with the modern State of Lithuania founded by the Act of Independence of 16 February 1918, as expressed in the Act of 11 March 1990 on the Re-establishment of the Independent State of Lithuania.

By the Act of 11 March 1990 on the Re-establishment of the Independent State of Lithuania, the State of Lithuania also declared its adherence to the universally recognised principles of international law and committed itself to guaranteeing human, civil, and ethnic community rights. The Constitutional Court has held that the observance of international obligations undertaken by the State of Lithuania of its own free will and respect for the universally recognised principles of international law are a legal tradition and a constitutional principle of the restored independent State of Lithuania (*inter alia*, the rulings of 14 March 2006, 5 September 2012, and 24 January 2014). It should be pointed out that the adherence of the State of Lithuania to the universally recognised principles of international law, as declared in the Act of 11 March 1990 on the Re-establishment of the Independent State of Lithuania, is reflected, *inter alia*, in Paragraph 1 of Article 135 of the Constitution: as held by the Constitutional Court, this provision of the Constitution consolidates the constitutional principle of respect for international law (ruling of 24 January 2014).

The Act of 11 March 1990 on the Re-establishment of the Independent State of Lithuania also contains the fundamental provision that “The territory of Lithuania is whole and indivisible”. It should be noted that this fundamental provision is reflected in Article 10 of the Constitution, which stipulates that “The territory of the State of Lithuania shall be integral and shall not be divided into any state-like formations”.

A fundamental constitutional act of the State of Lithuania – the Declaration of the Council of the Lithuanian Freedom Fight Movement of 16 February 1949

The Constitutional Court’s ruling of 30 July 2020

The Declaration of the Council of the Lithuanian Freedom Fight Movement of 16 February 1949 (hereinafter also referred to as the Declaration of the LFFM Council of 16 February 1949) is also a fundamental constitutional act of the State of Lithuania; it was adopted by the LFFM Council as “the supreme political body of the Nation, in charge of the political and military fight for the liberation of the Nation”, expressing the will of the Nation (Item 1 of the Preamble to the Declaration of the LFFM Council of 16 February 1949).

It should be noted that the principles of the restoration of the Independence of the Republic of Lithuania, laid down in the Declaration of the LFFM Council of 16 February 1949, are based on the continuity of the State of Lithuania and its constitutional identity with the modern State of Lithuania founded by the Act of Independence of 16 February 1918 (*inter alia*, Items 3, 5, 6, 8, and 14).

It should be noted in this context that, as held by the Constitutional Court, the restoration of the Independence of the Republic of Lithuania was based on the continuity of the State of Lithuania, which means that the aggression started by the USSR against the Republic of Lithuania on 15 June 1940 (*inter alia*, the occupation and annexation of the territory of the Republic of Lithuania) did not end the existence of the State of Lithuania as a subject of international law or its sovereign powers (rulings of 22 February 2013 and 18 March 2014). The Constitutional Court has also held that the organised armed fight of the citizens of the Republic of Lithuania during 1944–1953 against the Soviet occupation should be regarded as the self-defence of the State of Lithuania; in view of the aggression carried out by the USSR against the Republic of Lithuania, also in view of the continuity of the State of Lithuania and the continuity

of citizenship of the Republic of Lithuania, the organised armed partisan forces should be regarded as the armed forces of the Republic of Lithuania that resisted the occupation, i.e. as volunteer forces that should be regarded as a party to an international armed conflict (ruling of 18 March 2014).

Therefore, it should be stressed that the Declaration of the LFFM Council of 16 February 1949 was adopted by the LFFM Council as the then supreme institution of the Republic of Lithuania that fought against the occupation and expressed the will of the People to restore the Independence of the State of Lithuania on the basis of its continuity. It should be mentioned in this context that, as held by the Constitutional Court, by Item 22 of the Declaration of the LFFM Council of 16 February 1949, the State of Lithuania expressed its commitment to the Universal Declaration of Human Rights (rulings of 18 March 2014 and 20 October 2015).

It should also be noted that the Declaration of the LFFM Council of 16 February 1949 derives from the Act of Independence of 16 February 1918 (along with the Resolution of the Constituent Assembly (Seimas) of 15 May 1920 on the re-established democratic State of Lithuania): by adopting the Declaration of the LFFM Council of 16 February 1949, it was sought to implement the unamendable fundamental constitutional principles of the Act of Independence of 16 February 1918 – independence, democracy, and the innate nature of human rights and freedoms, as well as the fundamental provision that the State of Lithuania is a democratic republic, as proclaimed in the Resolution of the Constituent Assembly (Seimas) of 15 May 1920 on the re-established democratic State of Lithuania. As mentioned before, these unamendable fundamental constitutional principles and the said fundamental provision are consolidated in Article 1 of the Constitution, which provides that “The State of Lithuania shall be an independent democratic republic”.

The Declaration of the LFFM Council of 16 February 1949 laid down the foundations and principles for the future constitutional order of the restored independent State of Lithuania, which express the constitutional traditions of the State of Lithuania: a democratic republic (Items 3, 14, and 16); the sovereignty of the People (Item 4); a parliamentary republic (Item 14); free, democratic, universal, equal, and secret suffrage (Item 5); respect for human rights and freedoms (Items 14 and 22); the equality of the rights of citizens (Item 15); respect for religion (Item 18); the social orientation of the state (Items 19 and 20); the western geopolitical orientation of the State of Lithuania (Item 22); legal responsibility for actions against the State of Lithuania and the prohibition of totalitarian regimes (Items 16 and 17).

It should be noted that these constitutional traditions of the State of Lithuania are reflected in the provisions of the Constitution adopted by the citizens of Lithuania in the referendum of 25 October 1992, *inter alia*, in Articles 1, 2, 4, 18, 25, 26, 29, 33, 35, 43, 52, 55, and 135 thereof, also in the Constitutional Act of 8 June 1992 on the Non-Alignment of the Republic of Lithuania to Post-Soviet Eastern Unions and the Constitutional Act of 13 July 2004 on Membership of the Republic of Lithuania in the European Union, which are a constituent part of the Constitution.

The Constitution is supreme law; the source of the Constitution is the national community itself – the civil People (rulings of 25 May 2004, 24 January 2014, and 11 July 2014). As held by the Constitutional Court, it is entrenched in the Preamble to the Constitution, *inter alia*, that the Lithuanian People for centuries staunchly defended their freedom and independence, embodied the innate right of the human being and the People to live and create freely in the land of their fathers and forefathers, and preserved the striving and the right to reside in the independent State of Lithuania (ruling of 13 November 2006). Thus, the Constitution adopted by the citizens of Lithuania in the referendum of 25 October 1992 also derives from the will of the People to have the independent democratic State of Lithuania, and this will is expressed, *inter alia*, in the Declaration of the LFFM Council of 16 February 1949, which is derived from the Act of Independence of 16 February 1918 (along with the Resolution of the Constituent Assembly (Seimas) of 15 May 1920 on the re-established democratic State of Lithuania).

The continuity of the State of Lithuania and its constitutional identity

The Constitutional Court's ruling of 30 July 2020

... Article 1 of the Constitution must be interpreted in the light, *inter alia*, of the continuity of the state and its constitutional identity with the modern State of Lithuania founded by the Act of Independence of 16 February 1918, as expressed in the Act of 11 March 1990 on the Re-establishment of the Independent State of Lithuania.

[...]

... as held by the Constitutional Court, the restoration of the Independence of the Republic of Lithuania was based on the continuity of the State of Lithuania, which means that the aggression started by the USSR against the Republic of Lithuania on 15 June 1940 (*inter alia*, the occupation and annexation of the territory of the Republic of Lithuania) did not end the existence of the State of Lithuania as a subject of international law or its sovereign powers (rulings of 22 February 2013 and 18 March 2014). The Constitutional Court has also held that the organised armed fight of the citizens of the Republic of Lithuania during 1944–1953 against the Soviet occupation should be regarded as the self-defence of the State of Lithuania; in view of the aggression carried out by the USSR against the Republic of Lithuania, also in view of the continuity of the State of Lithuania and the continuity of citizenship of the Republic of Lithuania, the organised armed partisan forces should be regarded as the armed forces of the Republic of Lithuania that resisted the occupation, i.e. as volunteer forces that should be regarded as a party to an international armed conflict (ruling of 18 March 2014).

1.1.2. The sovereignty of the Nation

The right of the civil Nation to create the State of Lithuania

The Constitutional Court's ruling of 30 December 2003

Article 2 of the Constitution prescribes: “The State of Lithuania shall be created by the Nation. Sovereignty shall belong to the Nation.” Under Article 4 of the Constitution, “The Nation shall execute its supreme sovereign power either directly or through its democratically elected representatives”. Paragraph 1 of Article 33 of the Constitution stipulates that “Citizens shall have the right to participate in the governance of their State both directly and through their democratically elected representatives”; under Paragraph 2 of Article 3 of the Constitution, “The Nation and each citizen shall have the right to resist anyone who encroaches on the independence, territorial integrity, and constitutional order of the State of Lithuania by force”.

It follows from these and other provisions of the Constitution that only the citizens of the Republic of Lithuania, i.e. the national community – the civil Nation, have the right to create the State of Lithuania, i.e. only citizens have the right to decide what the State of Lithuania must be like, to establish the constitutional order of the State of Lithuania, the organisation of institutions implementing state power, the grounds of legal relationships between a person and the state, the system of the economy of the country, etc. When implementing their rights and freedoms, citizens participate in executing the sovereignty of the Nation.

The civil Nation and its right to create the State of Lithuania

The Constitutional Court's ruling of 13 November 2006

The institution of citizenship entrenched in the Constitution is inseparable from the State of Lithuania and from the constitutional concept of the civil Nation – the national community.

The State of Lithuania came into being on the basis of an ethnical nation – the Lithuanian nation. This is reflected in the Preamble to the Constitution, which states that it is the Lithuanian nation (i.e. an ethnical nation) that created the State of Lithuania many centuries ago, for centuries staunchly defended its freedom and independence, preserved its spirit, native language, writing, and customs, embodied the innate right of the human being and the Nation to live and create freely in the land of their fathers and forefathers and preserved the striving and the right to reside in the independent State of Lithuania.

The states created on the basis of ethnical nations are national states. In particular, a national state is a political form of the common life of a certain ethnical nation. A national state ensures the possibility of fostering the identity, culture, mentality, language, traditions, and customs of an ethnical nation, helps to accumulate the experience of statehood and to pass it on to the posterity, as well as to gain maturity, and provides the necessary guarantees of historical survival. The fully fledged life of an ethnical nation would be particularly burdened or even impossible without a national state.

The fact that the State of Lithuania came into being on the basis of the Lithuanian nation is reflected not only in the Preamble to the Constitution, but also in other provisions of the Constitution: Lithuanian is the state language (Article 14); and everyone who is Lithuanian may settle in Lithuania (Paragraph 4 of Article 32). The provision of Paragraph 4 of Article 32 of the Constitution, under which everyone who is Lithuanian may settle in Lithuania, means that all Lithuanians who reside abroad, wherever their permanent residence, have the right to come back to Lithuania, their ethnical homeland, at any time. Under the Constitution, it is not allowed to establish any such a legal regulation that would separate Lithuanians living abroad from the Lithuanian nation. Lithuanians who reside abroad may not be deprived of the possibility of participating in the life of the Lithuanian nation if they so request. Lithuanians residing abroad are an inseparable part of the Lithuanian nation.

[...]

Persons who identify themselves with the Lithuanian nation as an ethnical nation compose the absolute majority of the population of the modern State of Lithuania. In this respect, as well as by the name of the state and by the recognition of the status of Lithuanian as the state language, the Lithuanian nation meets the generally recognised definition of a titular nation.

On the other hand, non-Lithuanians – people of other ethnical nations – have also resided in the lands of Lithuania for centuries. Together with Lithuanians, they created and defended the State of Lithuania and cared about its future. Thus, throughout the ages, the pattern of the life of the Lithuanian nation has been based on the peaceful coexistence between the Lithuanian nation, as a titular nation, and other national communities living in the territory of Lithuania, as well as on the forbearance and tolerance of the people of various nations towards each other. Fostering national concord in the land of Lithuania is a historical tradition of the State of Lithuania. This tradition was violated only in such periods of the history of Lithuania when the State of Lithuania itself was occupied by foreign states and when the Lithuanian nation could not authentically create its political life by itself.

The Lithuanian nation fosters national concord in the land of Lithuania (Preamble to the Constitution). In this context, it needs to be emphasised that, under the Constitution, the citizens (as a whole) of the State of Lithuania compose the civil Nation – the national community. In Article 2 of the Constitution, whereby the State of Lithuania is created by the Nation and sovereignty belongs to the Nation, and in Article 4 thereof, according to which the Nation executes its supreme sovereign power either directly or through its democratically elected representatives, the notion “Nation” is used precisely in this sense.

In this context, it should be emphasised that the notions “Lithuanian nation” and “Nation” used in the Constitution may not be opposed. The Lithuanian nation is the basis and the necessary precondition for the existence of the civil Nation – the national community.

... citizenship ... expresses the legal membership of a person in the state and reflects the fact that a person legally belongs to the civil Nation – the national community. The Lithuanian civil Nation – the national community – unites the citizens of the State (irrespective of their ethnical origin); the citizens, as a whole, compose the Lithuanian civil Nation. All citizens of the Republic of Lithuania belong to the Lithuanian civil Nation, regardless of whether the said citizens belong to the titular nation (they are Lithuanians) or to national minorities (ruling of 10 May 2006). All citizens of the Republic of Lithuania, irrespective of their ethnical origin, are equal under the Constitution; they may not be discriminated against or granted any privileges on the grounds of their ethnical origin and nationality. On the other hand, the Constitutional Court has held that integration into the society of Lithuania, as well as becoming a fully fledged member of the national community – the civil Nation – is related, *inter alia*, to making an effort to learn the state language, i.e. Lithuanian (ruling of 10 May 2006).

Namely, the Lithuanian civil Nation, the citizens of the reborn State of Lithuania, adopted and proclaimed the Constitution of the Republic of Lithuania in the referendum of 25 October 1992. It is the Lithuanian civil Nation that is the source of the Constitution. The Constitutional Court has held that, “having adopted the Constitution, the civil Nation formed the normative basis for its own common life, as the national community – the civil Nation, and consolidated the state as the common good of all society” (rulings of 25 May 2004 and 19 August 2006).

The Constitutional Court has also held that “only the citizens of the Republic of Lithuania, i.e. the national community – the civil Nation, have the right to create the State of Lithuania, i.e. only citizens have the right to decide what the State of Lithuania must be like, to establish the constitutional order of the State of Lithuania, the organisation of institutions implementing state power, the grounds of legal relationships between a person and the state, the system of the economy of the country, etc. When implementing their rights and freedoms, citizens participate in executing the sovereignty of the Nation” (rulings of 30 December 2003 and 10 May 2006).

The forms of executing the supreme sovereign power of the Nation (Articles 2 and 4 and Paragraph 1 of Article 55 of the Constitution)

The Constitutional Court’s ruling of 11 July 2014

Article 2 of the Constitution, *inter alia*, stipulates that sovereignty belongs to the Nation; under Article 4 of the Constitution, the Nation executes its supreme sovereign power either directly or through its democratically elected representatives.

The Constitutional Court has held that the Nation directly executes its supreme sovereign power through two main organisational forms: national elections and referendums. The principles and main conditions for organising national elections and referendums are consolidated in constitutional norms, and the procedures for conducting national elections and referendums are regulated by the respective laws. The legal grounds for the aforesaid forms of democracy derive from Articles 2 and 4 of the Constitution, as well as from the electoral rights of citizens (Articles 33 and 34 of the Constitution) (decision of 11 July 1994). As the Constitutional Court noted in its ruling of 1 December 1994, the Nation, as a rule, directly expresses its will during referendums or direct general elections, i.e. the will of the Nation with regard to a concrete issue becomes known only after a referendum or direct general election has been held.

Thus, under the Constitution, a referendum is a form of the direct execution of the supreme sovereign power of the Nation; the Nation may also execute its supreme sovereign power indirectly – through its democratically elected representatives. It should be emphasised that there are not any such subjects that may be equated with the Nation, which enjoys sovereignty (Article 2 of the Constitution) and executes its supreme sovereign power either directly or through its democratically elected representatives (Article 4 of the Constitution). ... in its ruling of 1 December 1994, the Constitutional Court held that no initiative group for a referendum may be equated with the Nation or speak on behalf of the Nation.

In this context, it should be noted that, under Paragraph 1 of Article 55 of the Constitution, the members of the Seimas are representatives of the Nation. Thus, under the Constitution, only the Seimas is the representation of the Nation, through which the Nation executes its supreme sovereign power. As noted by the Constitutional Court, under the Constitution, there may not be and there is no confrontation between the supreme sovereign power executed by the Nation directly and the supreme sovereign power executed by the Nation through its democratically elected representatives – the members of the Seimas. Thus, under the Constitution, there may not be and there is no confrontation between the Nation and its representation – the Seimas: the Seimas implements those powers that have been assigned to it by the Nation in the Constitution, adopted by the Nation (ruling of 25 May 2004).

Consequently, when the Constitution is interpreted, it is not allowed to create opposition between the direct (through a referendum) and indirect (through the representation of the Nation – the Seimas) forms of the execution of the supreme sovereign power of the Nation.

The supreme sovereign power of the Nation may be executed only in observance of the Constitution

The Constitutional Court's ruling of 11 July 2014

... the Constitution is supreme law. The source of the Constitution is the national community – the civil Nation (ruling of 25 May 2004).

The Constitution reflects a social contract – the obligation democratically assumed by all citizens of the Republic of Lithuania to the current and future generations to live under the fundamental rules consolidated in the Constitution and to obey those rules in order to ensure the legitimacy of state power and the lawfulness of its decisions, as well as human rights and freedoms, so that concord would exist in society (ruling of 25 May 2004 and the decision of 20 April 2010). As the highest-ranking legal act and a social contract, the Constitution is based on universal and unquestionable values, such as the sovereignty belonging to the Nation, democracy, the recognition of human rights and freedoms and respect for them, respect for law and the rule of law, the limitation of the scope of powers, the duty of state institutions to serve the people and their responsibility to society, civic consciousness, justice, and the striving for an open, just, and harmonious civil society and a state under the rule of law (rulings of 25 May 2004, 19 August 2006, and 24 September 2009, the decision of 19 December 2012, and the ruling of 24 January 2014).

In view of the foregoing, it should be emphasised that the Constitution reflects the obligation of the national community – the civil Nation to create and reinforce the state by following the fundamental rules consolidated in the Constitution; the Constitution lays down the legal foundation for the common life of the Nation – the national community. Thus, it should also be emphasised that the Constitution equally binds the national community – the civil Nation itself; therefore, the supreme sovereign power of the Nation may be executed, *inter alia*, directly (by referendum) only in observance of the Constitution.

The requirement that the Constitution must be observed in executing supreme sovereign power by the Nation may not be assessed as a limitation or restriction on the sovereignty of the Nation (Article 3 of the Constitution)

The Constitutional Court's ruling of 11 July 2014

... under Article 3 of the Constitution, no one may restrict or limit the sovereignty of the Nation or arrogate to himself/herself the sovereign powers belonging to the entire Nation (Paragraph 1); the Nation and each citizen have the right to resist anyone who encroaches on the independence, territorial integrity, and constitutional order of the State of Lithuania by force (Paragraph 2).

Since the Constitution also binds the national community – the civil Nation itself, the requirement that the Constitution must be observed when the Nation, *inter alia*, directly (by referendum), executes its supreme sovereign power may not be assessed as a restriction or limitation, referred to in Article 3 of the Constitution, on the sovereignty of the Nation, or as the taking over of the sovereign powers belonging to the entire Nation. It should be emphasised that the purpose of the provisions of Article 3 of the Constitution is to protect the constitutional values referred to in this article (sovereignty of the Nation; the independence, territorial integrity, and constitutional order of the State of Lithuania); therefore, these provisions may not be invoked for the purpose of denying the said constitutional values. The provisions of Article 3 of the Constitution may not be interpreted, *inter alia*, in such a way that, purportedly, they imply the right of the Nation to disregard the Constitution, adopted by the Nation itself, or the right of any citizen or any group of citizens to equate themselves with the Nation and act on behalf of the Nation while seeking to violate the aforementioned constitutional values.

The forms of executing the supreme sovereign power of the Nation (Articles 2 and 4 of the Constitution)

The Constitutional Court's ruling of 15 February 2019

The Nation directly exercises its supreme sovereign power through two main organisational forms: national elections and referendums; the principles and main conditions for organising national elections and referendums are consolidated in constitutional norms, and the procedures for conducting national elections and referendums are regulated by the respective laws; the legal grounds for these forms of democracy derive from Articles 2 and 4 of the Constitution, as well as from the electoral rights of citizens (Articles 33 and 34 of the Constitution) (decision of 11 July 1994 (case no 5/94) and the ruling of 11 July 2014).

In this context, it should be noted that Article 2 of the Constitution, *inter alia*, stipulates that sovereignty belongs to the Nation; under Article 4 of the Constitution, the Nation executes its supreme sovereign power either directly or through its democratically elected representatives. It should also be noted that Article 33 of the Constitution establishes, *inter alia*, the right of citizens to participate in the governance of their state both directly and through their democratically elected representatives (Paragraph 1); Article 34 of the Constitution consolidates the constitutional grounds for the active and passive electoral rights of citizens.

Since both forms of the execution of the supreme sovereign power of the Nation and direct democracy – national elections and referendums – are based on the same constitutional grounds (*inter alia*, the sovereignty of the Nation, democracy, and electoral rights), it needs to be emphasised that no interpretation of the Constitution may lead to confrontation between them. As held by the Constitutional Court in its ruling of 11 July 2014, referendums, as well as elections, constitute a form of the direct execution of the supreme sovereign power of the Nation, as citizens express their will through national voting; the right to initiate a referendum and to vote in a referendum is granted only to citizens who have the electoral right; referendums are held according to the principles of electoral law.

In this context, it should be noted that the Constitution consolidates the following universally recognised democratic principles of elections to political representative institutions: elections must be conducted on the basis of universal, equal, and direct suffrage, and the ballot must be secret; under the Constitution, only such elections are allowed where there is free and fair competition for the mandate, where voters have the right and a real opportunity to choose from several candidates, and where at the time of voting they can express their will freely and without being subjected to control; the requirements of transparency and publicity must be applied to the formation of a representative political institution (ruling of 9 November 2010, the conclusion of 10 November 2012, and the ruling of 13 October 2014); the fairness of the electoral process must be ensured (*inter alia*, the conclusions of 5 November 2004, 7 November 2008, and 10 November 2012).

In this context, it should also be noted that the constitutionally consolidated democratic principles (universal, equal, and direct suffrage, secret ballot, free and fair elections, a transparent and public electoral process) governing elections to political representative institutions stem not only from the constitutional grounds for electoral rights, which are explicitly entrenched in Paragraph 1 of Article 33 and Article 34 of the Constitution, and from the principles of elections of the Seimas, the President of the Republic, and members of municipal councils, which are explicitly laid down in Paragraph 1 of Article 55, Paragraph 2 of Article 78, and Paragraph 2 of Article 119 of the Constitution. It needs to be emphasised that the said democratic principles of elections to political representative institutions are also derived from the imperatives implied by the constitutional principle of a state under the rule of law; these imperatives should be taken into account when the democratic principles of elections to political representative institutions are interpreted. As held by the Constitutional Court, in a constitutional democracy, special requirements are raised for the formation of political representative institutions; these institutions may not be formed in such a way that would raise doubts as to their legitimacy or legality, *inter alia*, doubts as to whether the election of persons to political representative institutions was in compliance with the principles of a democratic state under the rule of law (*inter alia*, the conclusion of 5 November 2004, the ruling of 9 November 2010, and the conclusion of 26 October 2012).

The Constitutional Court has held on more than one occasion that the constitutional principle of a state under the rule of law is a universal principle on which the entire legal system of Lithuania and the

Constitution itself are based. The constitutional principle of a state under the rule of law is an especially broad constitutional principle and it comprises a wide range of interrelated imperatives; the content of this principle should be revealed by taking into account the content of various other constitutional principles such as the supremacy of the Constitution, the sovereignty of the Nation, democracy, responsible governance, the limitation of the scope of powers, and the principle that state institutions must serve the people (rulings of 13 December 2004 and 17 November 2011). Thus, the constitutional principle of a state under the rule of law is related, *inter alia*, to such constitutional principles as the sovereignty of the Nation and democracy, which form the basis of the forms of direct democracy – national elections and referendums.

1.1.3. Democracy

Democratic elections as one of the essential features of a democratic state (as regards the doctrine of electoral rights, see 2. The constitutional status of persons, 2.3. Political rights and freedoms, 2.3.3. Electoral rights)

The Constitutional Court's conclusion of 23 November 1996

One of the fundamental characteristics of a democratic state is democratic elections to the representative institutions of state power. It is through elections that every citizen implements his/her right to participate, together with other citizens, in the governance of his/her country.

The State of Lithuania is democratic (Article 1 of the Constitution)

The Constitutional Court's ruling of 19 September 2002

Article 1 of the Constitution states that the State of Lithuania is an independent democratic republic. The provision that the State of Lithuania is democratic means that it is necessary in the state to ensure the supremacy of the Constitution, the protection of human rights and freedoms, the equality of all persons before the law and the court, the right to judicial protection, free and periodic elections, the separation and balance of powers, the responsibility of the authorities to citizens, the democratic process of decision-making, political pluralism, possibilities for the development of civil society, etc. It needs to be noted that the provision that the State of Lithuania is democratic is the constitutional obligation not to deviate from the requirements of democracy; the said obligation is applicable to all state institutions, including the legislature.

Laws or other legal acts that are in conflict with the Constitution violate the principle of the supremacy of the Constitution and other constitutional values; such laws and legal acts might also infringe on the elements of democracy consolidated in the Constitution. However, in itself, the statement that a law or another legal act is in conflicts with the Constitution does not mean that the provision of Article 1 of the Constitution that the State of Lithuania is democratic is violated. The Constitutional Court must assess in every individual case whether a legal regulation declared to be unconstitutional denies the provision of Article 1 of the Constitution, under which the State of Lithuania is democratic.

Democratic state governance; the responsibility of the authorities to society; and the principle of responsible governance

The Constitutional Court's ruling of 13 December 2004

The constitutional requirement that the state power of the State of Lithuania must be organised in a democratic way and that the democratic political regime must be in place in the country is inseparable from the provision of Paragraph 3 of Article 5 of the Constitution, under which state institutions serve the people, as well as from the provision of Paragraph 2 of the same article, under which the scope of powers is limited by the Constitution. The nature of the democratic institutions of power is such that all persons who implement the political will of the people are controlled in various forms so that this will would not be distorted (decision of 29 May 1996). In its ruling of 1 July 2004 and conclusion of 5 November 2004, the

Constitutional Court held that the Constitution consolidates the principle of responsible governance. The responsibility of the authorities to society is a principle found in a state under the rule of law, and it is established in the Constitution by providing that state institutions serve the people, that citizens have the right to govern the country either directly or through democratically elected representatives, to criticise the work of state institutions or that of their officials, and to file complaints against their decisions, also by guaranteeing citizens the possibility of defending their rights in a court and the right of petition, as well as by regulating the procedure for considering requests and complaints filed by citizens, etc. (ruling of 11 May 1999 and the conclusion of 5 November 2004).

The formation of political representative institutions in a democratic state

The Constitutional Court's conclusion of 10 November 2012

When emphasising the importance of elections to representative institutions, the Constitutional Court has held on more than one occasion that, in a constitutional democracy, the formation of political representative institutions is subject to special requirements. These institutions may not be formed in such a way that would raise doubts as to their legitimacy or lawfulness, *inter alia*, doubts as to whether the principles of a democratic state under the rule of law were upheld in the course of the election of persons to political representative institutions. Otherwise, the trust of people in representative democracy, state institutions, and the state itself would be undermined. Democratic elections are an important form of the participation of citizens in the governance of the state, as well as a necessary element of the formation of state political representative institutions. Elections may not be regarded as democratic or their results as legitimate and lawful if elections are held by infringing on the principles of democratic elections established in the Constitution and violating democratic electoral procedures (conclusion of 5 November 2004, the ruling of 1 October 2008, the conclusion of 7 November 2008, the rulings of 9 November 2010 and 29 March 2012, as well as the conclusion of 26 October 2012). In consolidating the provisions of electoral law in concrete laws, the legislature is obliged to follow these imperatives of the legal regulation that are consolidated in the Constitution (rulings of 1 October 2008 and 29 March 2012 and the conclusion of 26 October 2012).

Only a state that respects the dignity of each person can be considered democratic

The Constitutional Court's conclusion of 19 December 2017

... only such a state that has respect for the dignity of each person can be considered to be genuinely democratic.

Freedom of the media as a foundation of a pluralistic democracy

The Constitutional Court's ruling of 16 May 2019

... under the Constitution, Lithuania is a pluralistic democracy (ruling of 21 December 2006). It should be noted that freedom of the mass media, which is enshrined in the Constitution, *inter alia*, in Article 25 thereof, is one of the foundations of a pluralistic democracy.

A parliamentary minority as a necessary element of a pluralistic parliamentary democracy

The Constitutional Court's ruling of 18 December 2019

The provisions of Article 1 of the Constitution, as well as the principle of a state under the rule of law, which is established in the Constitution, determine the main principles of the organisation and activities of the state power of the State of Lithuania (rulings of 18 October 2000, 25 January 2001, and 29 March 2012); the provision of Article 1 of the Constitution that the State of Lithuania is democratic implies, *inter alia*, that the supremacy of the Constitution, the democratic decision-making process, and political pluralism must be ensured in the state (ruling of 19 September 2002); the majority principle is among the democratic principles of decision making (rulings of 22 July 1994, 4 April 2006, and

2 March 2018); the multi-party system creates the preconditions for ensuring political pluralism (ruling of 29 March 2012).

The Constitutional Court has noted that the Constitution consolidates parliamentary democracy; the model of parliamentary democracy, established in the Constitution, is rational and moderate (decisions of 21 November 2006 and 16 January 2014 and the ruling of 30 December 2015).

[...]

As emphasised by the Constitutional Court, under the Constitution, Lithuania is a pluralistic democracy (ruling of 21 December 2006, the conclusion of 22 December 2017, and the ruling of 16 May 2019); a necessary element of a pluralistic democracy is the recognition of the parliamentary opposition (rulings of 25 January 2001 and 4 April 2006 and the conclusion of 22 December 2017).

The Constitutional Court has noted that the Constitution implies the defence of the parliamentary minority and the minimum requirements for the protection of the opposition of the Seimas (rulings of 26 November 1993, 25 January 2001, and 4 April 2006); the Statute of the Seimas must lay down the guarantees for the functioning of the opposition (ruling of 25 January 2001).

... under the Constitution, Lithuania is a pluralistic parliamentary democracy, whose *conditio sine qua non* is the parliamentary minority, *inter alia*, the parliamentary opposition. It should be emphasised that the mission of the parliamentary minority, *inter alia*, that of the parliamentary opposition, is to reflect the diversity of political views in the parliament, thus ensuring political pluralism in the parliament of a democratic state under the rule of law and creating the preconditions for such a parliament to fulfil its functions; the mission of the parliamentary opposition is, *inter alia*, to propose a political programme alternative to the parliamentary majority and put forward political decisions based on this programme, as well as to monitor the political activities of the parliamentary majority, *inter alia*, to criticise it.

1.1.4. The form of government of the state

The form of government of the State of Lithuania

The Constitutional Court's ruling of 10 January 1998

On the basis of the competence of the institutions of state power as established by the Constitution of the Republic of Lithuania, the model of government of the State of Lithuania should be categorised as a parliamentary republican form of government. At the same time, it should be noted that the form of government of our state also has certain characteristics of the so-called mixed (semi-presidential) form of government. This is reflected in the powers of the Seimas, the powers of the Head of State – the President of the Republic, and the powers of the Government, as well as in the legal arrangement of their reciprocal interaction. The Lithuanian constitutional system lays down the principle of the responsibility of the Government to the Seimas, which determines the respective manner of forming the Government.

1.2. THE TERRITORIAL INTEGRITY OF THE STATE

The territorial integrity of the state (Article 10 of the Constitution) (on the administrative division of the state, see 10. Local self-government and governance)

The Constitutional Court's ruling of 18 February 1998

Article 10 of the Constitution provides that the territory of the State of Lithuania is integral and is not divided into any state-like formations. It is this provision that contains the constitutional consolidation of the unitary state system and expresses the idea of the united and indivisible state.

1.3. AN OPEN, JUST, AND HARMONIOUS CIVIL SOCIETY AND A STATE UNDER THE RULE OF LAW

Justice as one of the main objectives of law and as the foundation of a state under the rule of law

The Constitutional Court's ruling of 22 December 1995

One of the main objectives of law as a means of regulating social life is justice. Justice is one of the most important moral values and it is [the foundation] of a state under the rule of law. The striving for justice and a state under the rule of law is consolidated in the Preamble to the Constitution. Justice may be implemented by ensuring a certain balance of interests and by avoiding contingencies and arbitrariness, the instability of social life, and clashes of interests. It is impossible to attain justice by recognising the interests of only one group or one person and by denying the interests of others at the same time.

The principles of a state under the rule of law in the area of the legal regulation governing the activity and responsibility of state officials

The Constitutional Court's ruling of 11 May 1999

In the area of the legal regulation of the activities of state institutions and officials, the principles of a state under the rule of law are implemented, among other things, by combining trust in state officials with public control over their activities and with their responsibility to society.

In a democratic state, officials and institutions must follow law. When carrying out the functions that are important to society and the state, officials must not be subject to any threats if they perform their duties without violating laws. ...

... The responsibility of the authorities to society is a principle found in a state under the rule of law. The principle of the responsibility of the authorities to society is constitutionally consolidated by providing that state institutions serve the people, that citizens have the right to govern the country either directly or through democratically elected representatives, that citizens have the right to criticise the work of state institutions or that of their officials, and to file complaints against their decisions; the said principle is constitutionally consolidated by guaranteeing citizens the possibility of defending their rights in a court, the right of criticism, and the right of petition, also by regulating the procedure for considering requests and complaints of citizens, etc.

Impeachment is one of the instruments of the self-protection of civil society. In the constitutions of democratic states, impeachment is considered a special procedure when the question of the constitutional responsibility of an official is decided. Providing for a special procedure for removing the top-ranking officials from office or that for the revocation of their mandate, public and democratic control over their activities is ensured; at the same time, such officials are granted additional guarantees that they would perform their duties on the basis of legislation and law.

[...]

One of the essential features of a state under the rule of law is the protection of the rights and freedoms of individuals. The norms regulating impeachment must not only create the possibility of removing a person from office or revoking his/her mandate, but also ensuring the rights of impeached persons. Impeachment proceedings can be recognised to be in line with the principles of a state under the rule of law when they are fair. This means that individuals must be equal before both the law and the institutions carrying out impeachment; they must have the right to be heard and the legally guaranteed possibility of defending their rights. If the principles of fair legal proceedings were not observed in the course of impeachment, this would indicate failure to meet the requirements of a state under the rule of law.

[...]

... the Seimas, exercising its discretion to establish a differentiated procedure for impeachment proceedings, is bound by the constitutional concept of impeachment. This concept implies fair legal proceedings, in which priority is given to the protection of the rights of the person. When guaranteeing the protection of the rights of individuals, it is necessary to pay regard to the fundamental principles of a state under the rule of law; such principles require that jurisdictional and other law-applying institutions be impartial and independent, that they seek to establish the objective truth, and that they adopt their decisions only on the grounds of law. This is possible only if the proceedings are public, the parties to the proceedings have equal rights, and the legal disputes, in particular those regarding the rights of the person, are decided by ensuring that the particular person has the right and possibility of defending those rights. In a state under

the rule of law, the right of individuals to defend their rights is unquestionable. Since the Seimas, deciding the question of removing a person from office or that of revoking his/her mandate, acts as a jurisdictional institution, impeachment proceedings are subject to the same requirements.

When the question of constitutional or any other responsibility is decided, the aforesaid principles of a state under the rule of law are implemented both through the procedural rights of the person against whom this sanction is applied and through the guarantees of such rights. The recognition of the rights of an individual is a necessary element of the rule of law.

... the procedural rights must be ensured when the question of criminal or that of constitutional responsibility is decided. In the course of impeachment in the Seimas, it is necessary to ensure the right of the person whose constitutional responsibility is decided to take part in the proceedings and to defend himself/herself. Before adopting its decision, the Seimas must also hear the other party (*audi alteram partem*).

The principle of a state under the rule of law (in the sphere of state governance, it is allowed to give instructions only to a subordinate subject)

The Constitutional Court's ruling of 23 November 1999

... [the principle of a state under the rule of law] also means that it is possible, in the sphere of state governance, to stipulate in a law or another legal act that a certain subject has the right to give instructions to another subject only if the relations of subordination between them are present. In other words, instructions may only be given to a subordinate.

The principle of a state under the rule of law

The Constitutional Court's ruling of 23 February 2000

The Preamble to the Constitution consolidates the striving for an open, just, and harmonious civil society and a state under the rule of law. It needs to be noted that the constitutional principle of a state under the rule of law is a universal principle on which the entire legal system of Lithuania and the Constitution of the Republic of Lithuania itself are based, that the content of the principle of a state under the rule of law reveals itself in various provisions of the Constitution, and that this principle should be interpreted inseparably from the striving, declared in the Preamble to the Constitution, for an open, just, and harmonious civil society and a state under the rule of law. The principle of a state under the rule of law, which is consolidated in the Constitution, also implies, among other requirements, that human rights and freedoms must be ensured, that all institutions exercising state power and other state institutions must act on the basis of law and in compliance with law, that the Constitution is the supreme legal act, and that laws, government resolutions, and other legal acts must be in compliance with the Constitution.

The duty of the participants of the legislation process to bring in line with the Constitution all legal acts that they draft and adopt

The Constitutional Court's ruling of 18 October 2000

The Seimas and other participants of the legislation process must bring in line with the Constitution all legal acts that they draft and adopt. This is one of the main measures ensuring the constitutional order and one of the fundamental requirements of a state under the rule of law.

The principle of a state under the rule of law gives rise to the requirement for the proportionality of legal responsibility

See 3. Legal responsibility, 3.1. General provisions, the ruling of 2 October 2001 (proportionality of responsibility for violations of law).

The legal force of legal acts is prospective; law must be public

See 1.8. The foundations of lawmaking and of the application of law, 1.8.1. General provisions, the ruling of 29 November 2001.

The principle of the protection of legitimate expectations

The Constitutional Court's ruling of 18 December 2001

The principle of the protection of legitimate expectations is linked with the duty of all state institutions to observe the undertaken obligations. The said principle also means the protection of acquired rights, i.e. persons have the right to reasonably expect that they will retain their rights, acquired under effective legal acts, for the established period of time and will be able to implement these rights in reality. In its ruling of 12 July 2001, the Constitutional Court held that, under this principle, a legal regulation may be amended only in accordance with the procedure established in advance and without violating the principles and norms of the Constitution; when amending a legal regulation, it is necessary, *inter alia*, to comply with the principle of *lex retro non agit* and it is not permitted to deny the legitimate interests and legitimate expectations of persons by means of amendments to a legal regulation.

The balance among the values consolidated in the Constitution

The Constitutional Court's ruling of 4 March 2003

... the values consolidated in the Constitution constitute a harmonious system; there is a balance among them. In the event of a clash between the values protected by the Constitution, it is necessary to reach decisions ensuring that not a single of the said values is denied or unreasonably limited. Otherwise, the balance among the values protected by the Constitution, the constitutional imperative of a harmonious and civil society, as well as the constitutional principle of a state under the rule of law, would be denied (ruling of 23 October 2002).

Legal certainty and legal clarity

The Constitutional Court's ruling of 30 May 2003

Legal certainty and legal clarity are among the essential elements of the principle of a state under the rule of law, which is consolidated in the Constitution. The imperative of legal certainty and legal clarity implies that any legal regulation must meet certain obligatory requirements. A legal regulation must be clear and harmonious; legal norms must be formulated precisely; and they may not contain ambiguities. Legal acts must be published in accordance with the established procedure; all subjects of legal relationships must have the possibility of access to such acts.

The principle of a state under the rule of law also means that a legal regulation may be amended only in accordance with the procedure established in advance and without violating the principles and norms of the Constitution; when amending a legal regulation, it is necessary, *inter alia*, to comply with the principle of *lex retro non agit* (ruling of 12 July 2001).

It was held in the Constitutional Court's ruling of 29 November 2001 that the requirement that only published legal acts are effective is also an essential element of the principle of a state under the rule of law. Law must be public. The constitutional requirements that only published legal acts are effective and that they must be prospective are an important precondition for legal certainty.

The hierarchy of legal acts

The Constitutional Court's ruling of 30 December 2003

... the constitutional principle of a state under the rule of law also implies the hierarchy of legal acts, *inter alia*, it implies that substatory legal acts may not be in conflict with laws, with constitutional laws, and with the Constitution, that substatory legal acts must be adopted on the basis of laws, and that a substatory legal act is an act of the application of the norms of a law irrespective of whether that act has one-off (*ad hoc*) application or permanent validity.

The framework of state institutions and the procedure for forming state institutions in a state under the rule of law

The Constitutional Court's ruling of 25 May 2004

Justice, an open and harmonious civil society, and a state under the rule of law would not be possible if all state power were held by a certain single state authority institution. The Constitution consolidates such a framework of institutions exercising state power and such a procedure of their formation whereby a balance among state authority institutions is ensured, the powers of certain state authority institutions are balanced by the powers of other state authority institutions, all institutions exercising state power act in harmony and carry out their constitutional obligation to serve the people, the Constitutional Court resolves disputes related to the powers vested by the Constitution in the institutions of state power, all institutions exercising state power – the Seimas, the President of the Republic, the Government, and the judiciary, as well as other state institutions, are formed only from such citizens who, without reservations, obey the Constitution adopted by the Nation and who, while in office, unconditionally observe the Constitution and law, and act in the interests of the Nation and the State of Lithuania.

The principle of a state under the rule of law

The Constitutional Court's ruling of 13 December 2004

The striving for an open, just, and harmonious civil society and a state under the rule of law is declared in the Preamble to the Constitution. The said striving is one of the strivings of the Nation, who adopted the Constitution of the Republic of Lithuania by the referendum of 25 October 1992 precisely for implementing these strivings. In its ruling of 11 July 2002, the Constitutional Court held that the striving for an open, just, and harmonious civil society and a state under the rule of law, declared in the Preamble to the Constitution, is enshrined from various aspects and in various provisions of the Constitution, that the striving for a state under the rule of law, enshrined in the Constitution, should be interpreted inseparably from other provisions of the Constitution in which the principle of a state under the rule of law is consolidated, and that the striving for a state under the rule of law is expressed by the constitutional principle of a state under the rule of law.

When interpreting the content of the constitutional principle of a state under the rule of law, the Constitutional Court has held more than once in its rulings that the constitutional principle of a state under the rule of law is a universal principle on which the entire legal system of Lithuania and the Constitution of the Republic of Lithuania itself are based, that the constitutional principle of a state under the rule of law should be interpreted inseparably from the striving for an open, just, and harmonious civil society and a state under the rule of law, as declared in the Preamble to the Constitution, and that the content of the said constitutional principle reveals itself in various provisions of the Constitution.

The essence of the constitutional principle of a state under the rule of law is the rule of law. The constitutional imperative of the rule of law means that freedom of state power is limited by means of law, which must be obeyed by all subjects of legal relationships, including law-making subjects. It should be stressed that the discretion of all law-making subjects is limited by supreme law – the Constitution. All legal acts, as well as decisions of all state and municipal institutions and officials, must comply with and not contradict the Constitution.

The Constitutional Court has held that the constitutional principle of a state under the rule of law must be followed both in making and in implementing law (ruling of 6 December 2000). The compliance of each legal institution with the Constitution must be assessed according to how such an institution complies with the constitutional principles of a state under the rule of law (ruling of 11 May 1999).

The constitutional principle of a state under the rule of law is an especially broad constitutional principle and comprises a wide range of various interrelated imperatives. Thus, it should be stressed that the content of the constitutional principle of a state under the rule of law should be revealed by taking account of various provisions of the Constitution and by assessing all values consolidated, defended, and protected by the Constitution, and by having regard to the content of various other constitutional principles as, for instance: the principle of the supremacy of the Constitution, its integrity and direct application; the sovereignty of the Nation; democracy; responsible governance; the limitation of the scope of powers and the principle that state institutions serve the people; the publicity of law; justice (comprising, *inter alia*, natural justice); the separation of powers; civic consciousness; the equality of persons before the law,

courts, state institutions, and officials; respect for and the protection of human rights and freedoms (comprising, *inter alia*, the recognition that human rights and freedoms are innate); the balancing of the interests of a person and society; the secularity of the state and its neutrality in world-view matters; the social orientation of the state; social solidarity (combined with the responsibility of everyone for their own fate); and other constitutional principles of no less importance. The constitutional principle of a state under the rule of law is consolidated not only by the striving for an open, just, and harmonious civil society and a state under the rule of law, as declared in the Preamble to the Constitution, but, from various aspects, also by all other provisions of the Constitution. In its ruling of 19 September 2002, the Constitutional Court held that the constitutional principle of a state under the rule of law also embodies the striving for an open, just, and harmonious civil society and a state under the rule of law, as enshrined in the Preamble to the Constitution. The constitutional principle of a state under the rule of law integrates various values consolidated, protected, and defended by the Constitution, including those that are expressed by the aforementioned striving.

Thus, the constitutional principle of a state under the rule of law may not be interpreted as a principle that is consolidated only in the Preamble to the Constitution, nor may it be identified only with the declared therein striving for an open, just, and harmonious civil society and a state under the rule of law. On the other hand, since the content of the constitutional principle of a state under the rule of law should be interpreted without denying any single provision of the Constitution, none of the provisions of the Constitution – not a single constitutional principle or constitutional norm – may be interpreted in such a way that would deviate from the requirements of a state under the rule of law that arise from the Constitution, since the content of the constitutional principle of a state under the rule of law and, thus, also the constitutional concept of a state under the rule of law would be distorted or even denied. All provisions of the Constitution should be interpreted in the context of the constitutional principle of a state under the rule of law and the constitutionally consolidated concept of a state under the rule of law. The function of the constitutional doctrine is to disclose the content of the concept of a state under the rule of law (ruling of 11 May 1999).

[...]

... an investigation into the compliance of legal acts (parts thereof) with the striving for an open, just, and harmonious civil society and a state under the rule of law, as enshrined in the Preamble to the Constitution, implies an investigation into their compliance with the constitutional principle of a state under the rule of law. It should also be noted that the non-compliance of a legal act (part thereof) with any imperative (any element of the constitutional principle of a state under the rule of law) dictated by the constitutional principle of a state under the rule of law – a universal constitutional principle integrating various values consolidated, protected, and defended by the Constitution – means that the constitutional principle of a state under the rule of law is also violated.

Legal certainty, legal security, and the protection of legitimate expectations

The Constitutional Court's ruling of 13 December 2004

... Legal certainty, legal security, and the protection of legitimate expectations are inseparable elements of the principle of a state under the rule of law. The principle of legal security is one of the essential elements of the principle of a state under the rule of law, which is consolidated in the Constitution; the principle of legal security means the duty of the state to ensure the certainty and stability of a legal regulation, to protect the rights of the subjects of legal relationships, including acquired rights, as well as to respect legitimate interests and legitimate expectations. If legal certainty, legal security, and the protection of legitimate expectations are not ensured, the trust of persons in the state and law will not be ensured, either. The state must fulfil its obligations undertaken to a person.

In its rulings of 4 July 2003 and 3 December 2003, the Constitutional Court held that one of the elements of the principle of legitimate expectations is the protection of such rights that were acquired under the Constitution and under those laws and other legal acts that were not in conflict with the Constitution. It should be noted that, under the Constitution, in the relationships of a person with the state, only those

expectations of a person are protected and defended that arise from the Constitution itself or from the laws and other legal acts that are not in conflict with the Constitution. Only such expectations of a person in relationships with the state are considered legitimate.

The constitutional protection of legitimate interests of a person should be interpreted inseparably from the principle of justice, which is consolidated in the Constitution, from the protection of acquired rights, which is also consolidated in the Constitution, and from the necessity to ensure the trust of a person who obeys law and follows the requirements of laws in the state and law. The trust of a person in the state and law, as well as the protection of legitimate interests, as constitutional values, are inseparable from the presumption of the constitutionality and legitimacy of legal acts. Legal acts (parts thereof) are considered to be in compliance with the Constitution and legitimate until the moment when, according to the procedure established by the Constitution and the Law on the Constitutional Court, they are ruled to be in conflict with the Constitution (or in conflict with the Constitution and/or laws if the said legal acts are substatutory). Thus, until the moment when legal acts (parts thereof), according to the procedure established by the Law on the Constitutional Court, are ruled to be in conflict with the Constitution (or in conflict with the Constitution and/or laws if the said legal acts are substatutory) or until the moment when, according to the established procedure, they are declared no longer effective, the legal regulation established therein is binding on the respective subjects of legal relationships. The Constitution protects and defends a person who obeys law and follows the requirements of laws. Failure to pay regard to this provision would also mean derogation from the principle of justice, which is consolidated in the Constitution.

It should be stressed that there may be such factual situations where a person who met the conditions established in legal acts, under the said legal acts, acquired particular rights and, therefore, gained expectations that could be considered by this person to be reasonably legitimate during the period of the validity of the said legal acts; therefore, such a person could reasonably expect that, if he/she obeyed law and fulfilled the requirements of laws, his/her expectations would be held legitimate by the state and would be defended and protected. Such expectations may arise even from those legal acts that, on the basis and according to the procedure established in the Constitution and laws, are later ruled to be in conflict with the Constitution (or in conflict with the Constitution and/or laws if the said legal acts are substatutory). In this context, it should be noted that there may also be such factual situations where a person had already implemented his/her rights and obligations arising from a legal act that was later ruled to be in conflict with the Constitution (or in conflict with the Constitution and/or laws if the said legal act was substatutory) with regard to other persons and, due to this, under legal acts, those other persons also gained the respective expectations and could reasonably expect that the state would defend and protect such expectations. It should be especially stressed that, in certain cases, quite a long period of time may pass from the moment when such expectations emerge until the relevant legal acts are ruled to be in conflict with the Constitution (or in conflict with the Constitution and/or laws if the said legal acts are substatutory). The imperative of a balance among constitutional values, the constitutional requirements of legal certainty and legal security, the protection of acquired rights, which is enshrined in the Constitution, and the presumption of the constitutionality and legitimacy of legal acts determine, *inter alia*, the fact that the Constitution generally does not preclude protecting and defending, in certain special cases, also such acquired rights of a person that arise from the legal acts that are later ruled to be in conflict with the Constitution (or in conflict with the Constitution and/or laws if the said legal acts are substatutory), because failure to defend or protect such acquired rights would result in greater harm to such a person, other persons, society, or the state than the harm sustained by such a person, other persons, society, or the state [if the aforesaid rights were completely or partially protected and defended]. When deciding whether the acquired rights gained by the person during the period of the validity of a legal act that is later ruled to be in conflict with the Constitution (or in conflict with the Constitution and/or laws if the said legal act is substatutory) should be protected and defended (and if so, to what extent such acquired rights should be protected and defended), it is necessary to find out in each case whether, in the event of failure to protect and defend such acquired rights, other values protected by the Constitution would be violated and whether the balance among the values consolidated, protected, and defended by the Constitution would be disturbed. After certain legal acts are

ruled to be in conflict with the Constitution (or in conflict with the Constitution and/or laws if the said legal acts are substatory) and, due to this, certain persons who obeyed law, followed the requirements of laws, and trusted the state and its law may suffer negative consequences, the legislature has the constitutional obligation to assess all the related circumstances and, if necessary, to establish such a legal regulation that would create the possibility in the aforementioned special cases to fully or partially protect and defend the acquired rights of the persons who obeyed law and followed the requirements of laws, where such acquired rights arose from legal acts that were later ruled to be in conflict with the Constitution (or in conflict with the Constitution and/or laws if the said legal acts were substatory), in order that the principle of justice, enshrined in the Constitution, would not be derogated from, either.

At the same time, it should be emphasised that the Constitution does not protect and does not defend any such rights acquired by a person that are privileges in terms of their content; the defence and protection of privileges would mean the violation of the constitutional principles of the equality of the rights of persons and justice, as well as the violation of the imperative of harmonious society, consolidated in the Constitution, and, thus, also the violation of the constitutional principle of a state under the rule of law.

The right to judicial protection as an element of the principle of a state under the rule of law

The Constitutional Court's ruling of 13 December 2004

The jurisprudence of the Constitutional Court has on more than one occasion pointed to the imperative, arising from the constitutional principle of a state under the rule of law and from other provisions of the Constitution, according to which a person who believes that his/her rights and freedoms have been violated has an absolute right to access an independent and impartial court that would settle a dispute. The right of a person to apply to a court also implies his/her right to the due process of law; the latter right is a necessary condition for the administration of justice. It should be emphasised that the constitutional right of a person to apply to a court may not be artificially restricted and the implementation of this right may not be unreasonably burdened.

The requirements stemming from the principle of a state under the rule of law for law-making subjects

The Constitutional Court's ruling of 13 December 2004

The constitutional principle of a state under the rule of law implies various requirements for the legislature and other law-making subjects: law-making subjects are allowed to pass legal acts only without exceeding their powers; the requirements established in legal acts must be based on general provisions (i.e. certain legal norms and principles) that could be applied to all envisaged subjects of certain legal relationships; any differentiated legal regulation must be based only on the objective differences in the situation of the subjects of certain social relationships regulated by the respective legal acts; in order to ensure that the subjects of legal relationships are aware of the requirements set with respect to them by law, legal norms must be established in advance, legal acts must be published officially, and such acts must be public and accessible; a legal regulation established in laws and other legal acts must be clear, comprehensible, and coherent; the formulations in legal acts must be precise; the consistency and internal harmony of the legal system must be ensured; and legal acts may not contain provisions simultaneously regulating the same social relationships in a different manner; in order that the subjects of legal relationships could act in accordance with the requirements of law, a legal regulation must be relatively stable; legal acts may not demand impossible things (*lex non cogit ad impossibilia*); the effect of legal acts is prospective, whereas the retroactive effect of laws and other legal acts is not permitted (*lex retro non agit*), unless the situation of a subject of legal relationships would be alleviated without prejudice to other subjects of legal relationships (*lex benignior retro agit*); those violations of law for which responsibility is established in legal acts must be clearly defined; when imposing legal restrictions and responsibility for violations of law, regard must be paid to the requirement of reasonableness and the principle of proportionality; according to the principle of proportionality, the established legal measures must be necessary in a democratic society and suitable for achieving legitimate and universally important

objectives (there must be a balance between such objectives and measures); these measures may not restrict the rights of persons more than necessary in order to achieve the said objectives and, if those legal measures are related to sanctions for a violation of law, in such a case, the said sanctions must be proportionate to the committed violation of law; when legally regulating certain social relationships, it is obligatory to pay regard to the requirements of natural justice, comprising, *inter alia*, the necessity to ensure the equality of persons before the law, courts, state institutions, and officials; legal acts must be passed in accordance with the established procedural law-making requirements, including the requirements established by the law-making subject itself; etc.

The requirement stemming from the principle of a state under the rule of law for law-making subjects to respect the hierarchy of legal acts

The Constitutional Court's ruling of 13 December 2004

The constitutional principle of a state under the rule of law and other constitutional imperatives give rise to the requirement for the legislature to pay regard to the hierarchy of legal acts, which stems from the Constitution. This requirement means, *inter alia*, that lower-ranking legal acts are prohibited from regulating such social relationships that may be regulated only by means of higher-ranking legal acts, also that lower-ranking legal acts are prohibited from laying down such a legal regulation that would compete with that established in higher-ranking legal acts. ... through a substatory legal act the norms of a law are realised; therefore, a substatory legal act may not replace a law or create any new legal norms of a general nature that would compete with the norms of a law, because the supremacy of laws over substatory legal acts, which is consolidated in the Constitution, would thus be violated (ruling of 21 August 2002); it should also be stressed that substatory legal acts may not be in conflict with laws, constitutional laws, and the Constitution; substatory legal acts must be adopted on the basis of laws, because a substatory legal act is an act of the application of the norms of a law irrespective of whether such a substatory legal act has one-off (*ad hoc*) application or permanent validity (ruling of 30 December 2003).

There is no delegated legislation in Lithuania (rulings of 26 October 1995, 19 December 1996, 3 June 1999, and 5 March 2004); therefore, the Seimas – the legislature – cannot assign the Government or other institutions to regulate, by means of substatory legal acts, the legal relationships that, under the Constitution, must be regulated by means of laws; while the Government may not accept such powers. The said relationships may not be regulated by means of substatory acts of the Seimas, either.

... according to the Constitution, a legal regulation related to defining the content of human rights and freedoms or consolidating the guarantees of their implementation may be established only by means of a law. On the other hand, in cases where the Constitution does not require that particular relationships linked with human rights and with their implementation be regulated by means of a law, such relationships may also be regulated by means of substatory acts – acts that regulate the process (procedural) relationships of implementing human rights, the procedure for implementing individual human rights, etc.; however, under no circumstances may substatory acts establish such a legal regulation of the relationships linked with human rights and with their implementation that would compete with the one established in a law.

It should also be stressed that such failure to adhere to the form of a legal act where the Constitution requires that certain relationships must be regulated by means of a law, but they are regulated by means of a substatory act (irrespective of whether such relationships are, from any aspect, additionally regulated in a law the legal regulation established in which is challenged by the legal regulation laid down in a substatory act, or irrespective of the fact that no law regulates such relationships at all), may provide the sufficient grounds for declaring such a substatory legal act unconstitutional. Under the Constitution, it is the Constitutional Court that decides whether the substatory legal acts of the Seimas, the President of the Republic, or the Government, according to their form, are in conflict with the Constitution. When making such a decision, in every case, the Constitutional Court assesses all circumstances of the case, *inter alia*, the place of the reviewed legal regulation in the entire legal system, its objective, as well as the intentions of the law-making subject, the development of the legal regulation of the respective relationships and its changes before the legal act at issue was passed (legislative history), etc.

It should also be stressed that, in cases where substatory legal acts are ruled to be in conflict with the Constitution according to their form (due to the fact that they regulated such relationships that can be regulated only by means of a law) and may no longer be applied, it is necessary to pay regard to the requirement, arising from the Constitution, to assess whether other values protected by the Constitution will be violated, or whether the balance among the values consolidated, protected, and defended by the Constitution will be disturbed, in the event of failure to protect and defend those rights of persons that were acquired during the period of the validity of the said substatory legal acts. In these special cases, the legislature is under the constitutional obligation, having assessed all circumstances and having found that this is necessary, to establish such a legal regulation that would provide for the possibility of protecting and defending, fully or partially, the acquired rights of persons who obeyed law, followed the requirements of laws, and had trust in the state and its law in cases where those rights were acquired under the legal acts that were later ruled to be in conflict with the Constitution according to their form (due to the fact that they regulated such relationships that can only be regulated by means of a law); such a legal regulation established by the legislature must ensure that the principle of justice, enshrined in the Constitution, would not be derogated from.

The requirements stemming from the principle of a state under the rule of law for law-applying subjects

The Constitutional Court's ruling of 13 December 2004

The constitutional principle of a state under the rule of law must also be followed in applying law. When law is applied, *inter alia*, it is necessary to pay regard to the following requirements arising from the constitutional principle of a state under the rule of law as, for instance: law-applying institutions must comply with the requirement of the equality of the rights of persons; it is not permitted to punish anyone twice for the same violation of law (*non bis in idem*); responsibility (sanction, punishment) for any violations of law must be established in advance (*nulla poena sine lege*); no act is criminal unless it is defined as such by means of a law (*nullum crimen sine lege*), etc. In this context, mention should be made of the fact that the constitutional principle of a state under the rule of law requires that jurisdictional and other law-applying institutions be impartial and independent, that they seek to establish the objective truth, and that they adopt their decisions only on the basis of law (rulings of 11 May 1999, 19 September 2000, and 24 January 2003).

Article 110 of the Constitution provides that judges may not apply any laws that are in conflict with the Constitution. In the light of the hierarchy of legal acts, which stems from the Constitution, this provision of the Constitution also means that judges may not apply any such substatory legal acts that are in conflict with the Constitution. Moreover, judges may not apply any such substatory legal acts that are in conflict with a law. On the other hand, the aforementioned provision of the Constitution reflects the constitutional principle – one of the essential elements of the constitutionally consolidated principle of a state under the rule of law – that a legal act that is in conflict with a higher-ranking legal act may not be applied.

It should be noted that laws must be executed until the moment when they are amended or repealed or, according to the procedure established by the Law on the Constitutional Court, ruled to be in conflict with the Constitution (or in conflict with the Constitution and/or laws if the acts declared unconstitutional are substatory). ... it should be especially emphasised that, until the moment when laws are amended or, according to the procedure established by the Law on the Constitutional Court, are ruled to be in conflict with the Constitution, all subjects of legal relationships, consequently, including the Government, must execute and apply such laws within their competence; it is not allowed that the Government, which must itself apply laws and/or ensure that other state and municipal institutions and officials apply them, instead of performing the duties established for it by laws and/or ensuring that other state and municipal institutions and officials perform the duties established by laws for them, by means of its substatory legal acts establish such a legal regulation that would compete with the one laid down in laws and would completely or partially exempt the Government and/or other state and municipal institutions and officials from the performance of the aforementioned duties.

[...]

One of the numerous aspects of the constitutional principle of a state under the rule of law (directly related to the constitutional principle of the equality of the rights of persons) is that similar cases must be decided in a similar manner. Therefore, the discretion of jurisdictional institutions, when they resolve disputes and apply law, is limited. In its rulings of 21 July 2001 and 30 May 2003, as well as in its decision of 13 February 2004, the Constitutional Court held that the principle of a state under the rule of law, which is enshrined in the Constitution, implies, *inter alia*, the continuity of jurisprudence.

The proportionality of responsibility for violations of law

The Constitutional Court's ruling of 3 November 2005

While interpreting the constitutional principle of a state under the rule of law, the Constitutional Court has held that this principle implies various requirements for the legislature and other law-making subjects, *inter alia*: those violations of law for which responsibility is established in legal acts must be clearly defined; when legal restrictions and responsibility for violations of law are imposed, regard must be paid to the requirement of reasonableness and the principle of proportionality; according to the principle of proportionality, the established legal measures must be necessary in a democratic society and suitable for achieving legitimate and universally important objectives (there must be a balance between such objectives and measures); these measures may not restrict the rights of persons more than necessary in order to achieve the said objectives and, where these legal measures are related to sanctions for a violation of law, in such a case, the said sanctions must be proportionate to the committed violation of law; when social relationships are legally regulated, it is obligatory to pay regard to the requirements of natural justice, comprising, *inter alia*, the necessity to ensure the equality of persons before the law, courts, state institutions, or officials (ruling of 13 December 2004).

Thus, the constitutional principles of justice and a state under the rule of law also mean that there must be a fair balance (proportionality) between, on the one hand, the pursued objective to punish the violators of law and to ensure the prevention of violations of law and, on the other hand, the chosen measures to achieve this objective; the sanctions (penalties, punishments) that are established for violations of law must be proportionate to such violations. The constitutional principles of justice and a state under the rule of law do not permit establishing such penalties for violations of law and such amounts of fines that would clearly be disproportionate (inadequate) to the violation of law and the objective pursued (rulings of 6 December 2000, 2 October 2001, and 26 January 2004). The amounts of fines established for violations of laws must be such that are necessary for the pursued legitimate and universally important objective – to ensure that laws are observed and the established duties are carried out (ruling of 26 January 2004).

The principle of *bona fides*

The Constitutional Court's ruling of 27 June 2007

Under the Constitution, the subjects of legal relationships are under the duty to behave in good faith and without violating law. They have the duty to make effort by themselves to find out the requirements of law. This is required by the general legal principle of *bona fides*, which is inseparable from the constitutional principle of a state under the rule of law.

The principle of the protection of legitimate expectations

The Constitutional Court's ruling of 5 July 2007

The protection of legitimate expectations is one of the elements of the principle of a state under the rule of law, which is consolidated in the Constitution. The said protection implies, *inter alia*, that the state is under the duty to ensure the certainty and stability of a legal regulation, to protect the rights of the subjects of legal relationships, including acquired rights, and to respect legitimate interests. ...

The principle of the protection of legitimate expectations implies the duty of the state, as well as the duty of institutions implementing state power and other state institutions, to observe the obligations assumed by the state. The said principle also means the protection of acquired rights, i.e. persons have the

right to reasonably expect that they will retain their rights acquired under effective laws or other legal acts that are not in conflict with the Constitution for the established period of time and will be able to implement these rights in reality.

Trust in the state and in law (state and municipal institutions must fulfil their obligations)

The Constitutional Court's decision of 13 November 2007

... state and municipal institutions must fulfil their obligations. If state and municipal institutions could decide not to fulfil their obligations, for instance, by justifying such a decision by the fact that the entire state was facing particularly serious economic and financial difficulties, even after the said difficulties have been dealt with, it would have to be stated that those institutions are likely to ignore the legitimate expectations of various persons where such expectations arise from the obligations undertaken by the said institutions, and that the same institutions are likely to violate the rights of the said persons. Thus, the trust of people in the state and in law would be undermined. State and municipal institutions may not arbitrarily refrain from the fulfilment of obligations undertaken by them. The Constitution does not tolerate this.

Legal certainty and legal clarity

The Constitutional Court's ruling of 24 December 2008

... The imperative of legal certainty and legal clarity implies that a legal regulation must meet certain obligatory requirements: a legal regulation must be clear and harmonious; legal norms must be formulated precisely and may not contain any ambiguities (rulings of 30 May 2003 and 26 January 2004). ... the notions (formulations) that are related to the implementation and limitation of constitutional human rights must be very clear, defined, and comprehensible.

A legal act that is in conflict with a higher-ranking legal act may not be applied

The Constitutional Court's ruling of 2 March 2009

One of the essential elements of the constitutional principle of a state under the rule of law is the principle whereby a legal act that is in conflict with a higher-ranking legal act must not be applied. The Constitutional Court has held that, while administering justice, courts must invoke only those laws and legal acts that are not in conflict with the Constitution; courts may not apply a law that is in conflict with the Constitution (rulings of 13 December 2004, 16 January 2006, and 27 June 2007).

Justice as one of the main objectives of law and as the foundation of a state under the rule of law

The Constitutional Court's ruling of 29 November 2010

In its acts, the Constitutional Court has also held on more than one occasion that the constitutional principle of a state under the rule of law is inseparable from the principle of justice and vice versa (*inter alia*, the rulings of 17 March 2003, 3 December 2003, 24 December 2008, 8 October 2009, and 28 May 2010). Thus, the constitutional principle of justice is an inseparable element of the content of the constitutional principle of a state under the rule of law.

In its acts, the Constitutional Court has also held on more than one occasion that justice is one of the main objectives of law, as a means of regulating social relationships; justice is one of the most important moral values and [the foundation] of a state under the rule of law; justice may be implemented by ensuring a certain balance of interests and by escaping fortuity and arbitrariness, the instability of social life, and clashes of interests (rulings of 22 December 1995, 6 December 2000, 17 March 2003, 17 November 2003, 3 December 2003, and 24 December 2008, the decision of 20 April 2010, and the ruling of 29 June 2010).

The duty of the legislature to provide for a proper *vacatio legis*

See 5. The Seimas, 5.5. The procedure of activities of the Seimas, 5.5.2. The legislation process; the ruling of 15 February 2013.

The principle of a state under the rule of law

The Constitutional Court's ruling of 1 July 2013

... the essence of the constitutional principle of a state under the rule of law is the rule of law. The constitutional imperative of the rule of law means that freedom of state power is limited by means of law, which must be obeyed by all subjects of legal relationships, including law-making subjects (ruling of 13 December 2004).

Paragraph 2 of Article 5 of the Constitution provides that the scope of powers is limited by the Constitution.

Interpreting Paragraph 2 of Article 5 of the Constitution, the Constitutional Court has noted on more than one occasion that the Seimas, as the legislative institution that passes laws and other legal acts, is autonomous inasmuch as its powers and its wide discretion are not limited by the Constitution, *inter alia*, by the constitutional principles of a state under the rule of law, the separation of powers, responsible governance, the protection of legitimate expectations, legal clarity, as well as by other principles.

It needs to be emphasised that, when it passes laws, the Seimas is bound not only by the Constitution, but also by its own laws. This is an essential element of the constitutional principle of a state under the rule of law (*inter alia*, the rulings of 24 January 2003 and 24 September 2009).

The principle of a state under the rule of law (requirement to ensure human rights and freedoms; the principles of proportionality, justice, legal certainty, legal security, and the protection of legitimate expectations; the link with the principle of the equality of the rights of persons)

The Constitutional Court's ruling of 14 April 2014

The Constitutional Court has held that the constitutional principle of a state under the rule of law is a universal principle on which the entire legal system of Lithuania and the Constitution itself are based. The constitutional principle of a state under the rule of law is especially broad and comprises a wide range of various interrelated imperatives.

The Constitutional Court has held on more than one occasion that the principle of a state under the rule of law, which is consolidated in the Constitution, in addition to other requirements, also implies that human rights and freedoms must be ensured (*inter alia*, the rulings of 23 February 2000, 22 December 2010, 16 May 2013, and 9 October 2013).

The Constitutional Court has also held in its acts on more than one occasion that the constitutional principle of proportionality is one of the elements of the constitutional principle of a state under the rule of law; the principle of proportionality means that the measures provided for by law must be in line with the legitimate objectives that are important to society, that such measures must be necessary in order to reach the said objectives, and that such measures must not restrict the rights and freedoms of a person clearly more than necessary in order to reach the said objectives (*inter alia*, the rulings of 11 December 2009, 15 February 2013, 16 May 2013, and 9 October 2013).

The requirement, in accordance with the constitutional principle of proportionality, not to limit the rights and freedoms of a person more than necessary in order to reach the legitimate objectives that are important to society, *inter alia*, implies the requirement for the legislature to establish a legal regulation that would create the preconditions for the sufficient individualisation of limitations on the rights and freedoms of a person: a legal regulation limiting the rights and freedoms of a person, as provided for in a law, must be such that would create the preconditions for assessing, to the extent possible, an individual position of each person and, in view of all important circumstances, for individualising, accordingly, the specific measures that are applicable to and limit the rights of that person (ruling of 7 July 2011).

The Constitutional Court has noted that the content of the constitutional principle of a state under the rule of law should be revealed by taking account of the content of various other constitutional principles, including the principle of justice (which comprises, *inter alia*, natural justice). Any disregard of the principle of justice, which is consolidated in the Constitution, would also mean disregard of the constitutional principle of a state under the rule of law (rulings of 3 November 2005, 22 December 2010, and 9 October 2013). Justice may not be achieved through the satisfaction of the interests of exclusively

one group and the simultaneous denial of the interests of others (rulings of 4 March 2003 and 9 October 2013).

The Constitutional Court has held on more than one occasion that legal certainty, legal security, and the protection of legitimate expectations are inseparable elements of the principle of a state under the rule of law. The constitutional principles of legal certainty, legal security, and the protection of legitimate expectations imply the duty of the state to ensure the certainty and stability of a legal regulation, to protect the rights of persons, and to respect legitimate interests and legitimate expectations. These principles, *inter alia*, imply that the state must fulfil all its obligations undertaken to a person. If legal certainty, legal security, and the protection of legitimate expectations are not ensured, the trust of persons in the state and in law will not be ensured, either.

The constitutional principle of a state under the rule of law is also inseparable from the principle of the equality of the rights of persons, which is consolidated in the Constitution, *inter alia*, in Article 29 thereof. A violation of the constitutional principle of the equality of the rights of persons is, at the same time, a violation of the constitutional imperatives of justice and harmonious society; thus, such a violation is also a violation of the constitutional principle of a state under the rule of law (*inter alia*, the rulings of 6 February 2012, 14 December 2012, 30 April 2013, and 1 July 2013).

[...]

... the mere fact that, in view of a certain legal regulation, an exception is made does not mean that the principles of legal certainty, legal security, and the protection of legitimate expectations of a person are violated.

The principle of *ex injuria jus non oritur*

The Constitutional Court's ruling of 12 June 2020

... as stated by the Constitutional Court, the constitutional principle of a state under the rule of law gives rise to the requirement that the general legal principle of *ex injuria jus non oritur* (illegal acts cannot create law) must be respected (*inter alia*, the rulings of 30 December 2003, 27 May 2014, and 25 November 2019).

1.4. THE SUPREMACY OF THE CONSTITUTION

See 1.8. The foundations of lawmaking and of the application of law, 1.8.4. The hierarchy of legal acts, 1.8.4.2. The Constitution, 1.8.4.2.1. The supremacy of the Constitution.

1.5. THE SEPARATION OF POWERS

The principle of the separation of powers (Article 5 of the Constitution)

The Constitutional Court's ruling of 6 December 1995

Paragraph 1 of Article 5 of the Constitution prescribes: "In Lithuania, state power shall be executed by the Seimas, the President of the Republic and the Government, and the Judiciary." The content of this norm is revealed in other articles of the Constitution. The competence of each institution of state power is established in accordance with its mission; such competence is determined by the place of that branch of power in the general system of the branches of power and by its relationship with the other branches of power.

The Seimas passes laws, considers the programme of the Government presented by the Prime Minister, supervises the activities of the Government, appoints judges in the cases provided for by the Constitution, and decides other issues prescribed in Article 67 of the Constitution. The President of the Republic, who is the Head of State, represents the State of Lithuania and performs everything that he/she is assigned to perform by the Constitution and laws. The Government manages national affairs, executes laws and resolutions of the Seimas, prepares a draft state budget and executes the state budget when it is approved by the Seimas, and implements other powers of the Government. Courts administer justice. Thus, the

independence of separate branches of power, as well as a balance among them, is established in the Constitution.

The principle of the separation of powers; cooperation among state institutions (Article 5 of the Constitution)

The Constitutional Court's ruling of 10 January 1998

Article 5 of the Constitution prescribes: "In Lithuania, state power shall be executed by the Seimas, the President of the Republic and the Government, and the Judiciary." This norm, the content of which is particularised in other articles of the Constitution, consolidates the principle of the separation of powers in the state. This is the fundamental principle of the organisation and functioning of a democratic state under the rule of law. As it was noted in the Constitutional Court's ruling of 26 October 1995, this principle means that legislative power, executive power, and judicial power must be separated, sufficiently autonomous, but, at the same time, these branches of power must be balanced. Every institution of state power is conferred competence in accordance with its mission; the concrete content of such competence depends on the place of that institution among other institutions of state power and on the relation of its powers with the powers of other institutions.

Every branch of state power occupies a certain place in the system of state power and performs the functions characteristic of only that branch of power. The Seimas, which is composed of the representatives of the Nation – the members of the Seimas, passes laws, supervises the activity of the Government, approves the state budget and supervises its execution, and decides other issues provided for in the Constitution. The President of the Republic – the Head of State – represents the state and performs everything that he/she is assigned to perform by the Constitution and laws; while the Government is an executive institution of this country, which executes laws and other legal acts and manages national affairs. Courts administer justice.

Paragraph 2 of Article 5 of the Constitution provides that the scope of powers is limited by the Constitution. In the implementation of the general tasks and functions of the state, the activities of state institutions are based on their cooperation; therefore, their interrelations should be defined as interfunctional partnership. One of the ways to ensure cooperation among state institutions is the principle of the responsibility of the government to the parliament; the said principle is consolidated in the constitutions of most European states.

The principle of the separation of powers; the reciprocal control and balance of the institutions of state power, as well as partnership among the institutions of state power; the prohibition on taking over, transferring, waiving, and changing or limiting, by means of a law, the powers of a state authority institution that are directly established in the Constitution

The Constitutional Court's ruling of 21 April 1998

The main principles of the organisation and activities of the state authorities of the State of Lithuania are determined by the fundamental provision "The State of Lithuania shall be an independent democratic republic" of Article 1 of the Constitution and by the striving for a state under the rule of law, which is consolidated in the Preamble to the Constitution.

Paragraph 1 of Article 5 of the Constitution prescribes: "In Lithuania, state power shall be executed by the Seimas, the President of the Republic and the Government, and the Judiciary." ...

In its rulings of 26 October 1995 and 10 January 1998, as well as in its decision of 13 November 1997, the Constitutional Court noted that the principle of the separation of powers means that legislative power, executive power, and judicial power must be separated, sufficiently autonomous, but, at the same time, these branches of power must be balanced. Every institution of state power is conferred competence in accordance with its mission; the concrete content of such competence depends on the form of government of the state.

The status of the state supreme institutions is, first of all, based on the powers directly consolidated in the Constitution: the powers of the Seimas are consolidated in Article 67, those of the President of the

Republic are consolidated in Article 84, and those of the Government are laid down in Article 94 of the Constitution. The status of the Constitutional Court is consolidated in Chapter VIII, and the status of courts is enshrined in Chapter IX of the Constitution.

Other articles of the Constitution also contain the directly consolidated powers of the state supreme institutions (e.g. decisions concerning state loans and other basic property liabilities of the state are adopted by the Seimas (Paragraph 1 of Article 128); the Seimas hears a conclusion submitted by the Auditor General concerning the report on the annual execution of the budget (Paragraph 2 of Article 134); in the period between the sessions of the Seimas, the President of the Republic decides in concrete cases whether to give his/her consent for bringing a judge to criminal responsibility, or for detaining him/her, or for restricting his/her liberty otherwise (Paragraph 2 of Article 114); the President of the Republic is the Commander-in-Chief of the Armed Forces of the State (Paragraph 2 of Article 140); the Government appoints representatives to supervise the observance of the Constitution and laws by municipalities (Paragraph 2 of Article 123); the Government prepares a draft state budget (Article 130)).

In defining the functions and powers of the state supreme institutions, the Constitution also provides for their reciprocal control and balance, as well as for their partnership. For example, the President of the Republic is entitled to appoint the Prime Minister; however, he/she may implement this right only after the assent of the Seimas is given (Item 6 of Article 67, Items 4 and 5 of Article 84, Paragraph 1 of Article 92 of the Constitution); the Seimas appoints the judges and the President of the Supreme Court (Item 10 of Article 67 of the Constitution); however, this requires the proposal of the President of the Republic (Item 11 of Article 84 of the Constitution); the Seimas establishes and abolishes the ministries of the Republic of Lithuania; however, this requires the proposal of the Government (Item 8 of Article 67 of the Constitution).

The direct establishment of powers in the Constitution means that a state authority institution may not take over any powers from another authority institution, nor may it transfer or waive the said powers. Such powers may not be changed or limited by means of a law by establishing additional conditions for their implementation. In order to change or limit such powers, an amendment to the Constitution must be adopted.

In addition to the powers directly consolidated in the Constitution, the state supreme institutions also have the powers that are established in laws. For instance, on the basis of Item 10 of Article 84 of the Constitution, wherein it is prescribed that the President of the Republic “shall, according to the established procedure, appoint and release state officials provided for by law”, it is possible to judge about the possibility of such powers of the President of the Republic. When such powers are established, consideration must be taken of the provisions and principles of the Constitution that consolidate the nature of the institutions of state power and the nature of their interaction.

The principle of the separation of powers (independence of legislative power and judicial power in deciding the issues of constitutional and criminal responsibility)

The Constitutional Court's ruling of 11 May 1999

... In a state under the rule of law, every branch of state power (legislative, executive, or judicial) fulfils the functions vested in it and realises its competence. Paragraph 1 of Article 109 of the Constitution provides that, in Lithuania, justice is administered only by courts; whereas, under Article 74 of the Constitution, the Seimas is assigned to carry out impeachment. When a vote on impeachment takes place at the Seimas, the question of the constitutional responsibility, but not that of the criminal responsibility, of a person is decided. The removal of a person from office or the revocation of his/her mandate of a member of the Seimas through impeachment proceedings because of the suspicion that he/she has committed a crime is not binding on a court. In its turn, the constitutionally established independence of legislative power and judicial power determines that a judgment handed down by a court is not binding on the Seimas, which adopts a decision on the constitutional responsibility of a person. Otherwise, the constitutional principle of the separation of powers would be violated.

The powers of the Seimas to establish and abolish ministries (Item 8 of Article 67 of the Constitution)

The Constitutional Court's ruling of 3 June 1999

Establishing the functions and powers of the legislature and the executive, the Constitution also provides for their reciprocal interaction. Such a norm is consolidated in Item 8 of Article 67 of the Constitution: the Seimas “shall, upon the proposal of the Government, establish and abolish the ministries of the Republic of Lithuania”. ...

[...]

Item 8 of Article 67 of the Constitution consolidates the right of the Seimas to establish and abolish ministries. The implementation of such powers of the Seimas is bound by the concrete powers of the Government, which are consolidated in the Constitution: if the Government does not present a particular proposal, the Seimas may not adopt a decision whether to establish or abolish a ministry. Thus, this norm of the Constitution ensures a balance between the legislative and executive branches.

The judiciary as the only branch of power that is formed on a professional basis

The Constitutional Court's ruling of 21 December 1999

... According to the principle of the separation of powers, all branches of power are autonomous, independent, and capable of counterbalancing one another. The judiciary, being autonomous, may not be dependent on the other branches of power also because of the fact that it is the only branch of power formed on a professional, but not a political basis.

The principle of the separation of powers; the judiciary (Article 5 of the Constitution)

The Constitutional Court's ruling of 12 July 2001

Article 5 of the Constitution states that, in Lithuania, state power is executed by the Seimas, the President of the Republic and the Government, and the judiciary. In this and other articles of the Constitution, the principle of the separation of powers is enshrined. The judiciary is the only branch of state power that is assigned the function of administering justice. No other state institution or official may carry out this function. Only the autonomous and fully fledged judiciary may successfully fulfil this function assigned to it.

The fact that the judiciary is autonomous and fully fledged is inseparable from the principle of the independence of judges and courts, which is consolidated in the Constitution.

[...]

... the principle of the separation of powers is inseparable from the independence of judges and courts; such independence is characteristic of the organisation and activities of the judiciary.

The principle of the separation of powers; the principle of the accountability of executive bodies to the representation

The Constitutional Court's ruling of 24 December 2002

Under the Constitution, the organisation and activities of state power are based on the principle of the separation of powers. The Constitutional Court has held in its rulings on more than one occasion that the constitutional principle of the separation of powers implies, among other requirements, that legislative power, executive power, and judicial power must be separated and sufficiently autonomous; however, at the same time, there must be a balance among them. The Constitutional Court has also held that every state institution of power is conferred competence in accordance with its mission; the concrete content of such competence depends on the place of that branch of power in the general system of the branches of power and on its relationship with the other branches of power; once the Constitution directly provides for the powers of a particular state authority institution, no authority institution may take over such powers from another authority institution, nor may it transfer or waive the said powers; such powers may not be changed or limited by means of a law.

It also needs to be noted that the system of the branches of state power comprises legislative power, executive power, and judicial power; the constitutional principle of the separation of powers determines the relationships of the said three branches of state power. There are no such three branches of power on the level of local self-government; the Constitution provides only for municipal councils – representations of territorial communities and executive bodies that are formed by and are accountable to municipal councils. The Constitution consolidates the principle of the supremacy of municipal councils over the executive bodies that are accountable to them.

... the constitutional principle of the separation of powers is not identical to the constitutional principle of the accountability of executive bodies to the representation, on which, *inter alia*, the relationships of state legislative power and executive power, as well as the organisation and activities of self-government institutions, are based.

Under the Constitution, the Seimas exercises parliamentary control over the Government. At the request of the Seimas, the Government or individual ministers must give an account of their activities to the Seimas (Paragraph 1 of Article 101 of the Constitution). Thus, the separation of powers in the Constitution also implies the accountability of the Government, a collegial institution of executive power, to the legislature, the representation of the Nation.

Municipal councils are formed on the basis of universal, equal, and direct suffrage by secret ballot (Paragraph 2 of Article 119 of the Constitution); municipal councils form executive bodies that are accountable to them (Paragraph 4 of Article 119 of the Constitution). Thus, the relationships of municipal councils and their executive bodies are also based on the constitutional principle of the accountability of executive bodies to the representation.

At the same time, it needs to be noted that the constitutional principle of the accountability of executive bodies to the representation has certain particularities on the state governance level and on the local self-government level. For instance, under Paragraph 2 of Article 60 of the Constitution, a member of the Seimas (i.e. the representation of the Nation) may be appointed either as the Prime Minister or a minister (i.e. as a member of a collegial institution of executive power that is accountable to the Seimas). Meanwhile, an analogous reservation on the self-government level, whereby a member of the representation could be a member of an executive body that is accountable to the respective municipal council, is not provided for in the Constitution.

Thus, the constitutional principles of the separation of powers and of the accountability of executive bodies to the representation are not identical as regards the content of the said principles and the sphere of their application. The relationships of municipal councils and their executive bodies are based on the constitutional principles of the accountability of executive bodies to the representation and the supremacy of municipal councils over the executive bodies accountable to them; however, the said relationships are not based on the principle of the separation of powers.

There is no delegated legislation in Lithuania

The Constitutional Court's ruling of 5 March 2004

The constitutional principle of the separation of powers determines the absence of delegated legislation in Lithuania (rulings of 26 October 1995, 19 December 1996, and 3 June 1999). Therefore, according to the Constitution, the Seimas has no right to assign, *inter alia*, the Government to realise the constitutional competence of the Seimas, while the Government may not accept or carry out such an assignment.

The principle of the separation of powers; the scope of powers is limited by the Constitution (Article 5 of the Constitution)

The Constitutional Court's ruling of 13 May 2004

In its rulings, the Constitutional Court has held on more than one occasion that Article 5 of the Constitution consolidates, *inter alia*, the principle of the separation of powers.

The constitutional principle of the separation of powers is the fundamental principle of the organisation and functioning of a democratic state under the rule of law; it is consolidated not only in Article 5 of the Constitution, but also in other articles of the Constitution (rulings of 10 January 1998, 5 February 1999, 3 June 1999, 9 July 1999, 26 April 2001, and 12 July 2001). In interpreting the legal regulation established in Article 5 of the Constitution, it should be noted that the constitutional principle of the separation of powers is consolidated in Paragraphs 1 and 2 of this article (ruling of 23 April 2002); this principle is specified in greater detail in other articles of the Constitution from various aspects. On the other hand, Paragraph 2 of Article 5 of the Constitution reflects not only the constitutional principle of the separation of powers, but also the principle of the supremacy of the Constitution and the constitutional principle of a state under the rule of law (rulings of 12 July 2001, 24 December 2002, and 24 January 2003); if such a legal regulation were established under which not only the powers of a state authority institution specified in Paragraph 1 of Article 5 of the Constitution, but also the powers of some other authority institution, were expanded unreasonably from the constitutional standpoint, it would have to be held that the provision of Paragraph 2 of Article 5 of the Constitution, whereby the scope of powers is limited by the Constitution, is also violated (ruling of 24 December 2002).

The principle of the separation of powers

The Constitutional Court's ruling of 1 July 2004

In its rulings, the Constitutional Court has held on more than one occasion that the Constitution consolidates the principle of the separation of powers. The constitutional principle of the separation of powers means, *inter alia*, that persons performing functions in implementing the powers of a certain branch of state power may not, at the same time, perform functions in implementing the powers of another branch of state power, i.e. persons performing functions in implementing legislative power, or executive power, or judicial power may not simultaneously perform functions in implementing respectively both executive power and judicial power, or legislative power and judicial power, or legislative power and executive power, save the exceptions provided for in the Constitution itself. It needs to be noted that the provision of Paragraph 2 of Article 60 of the Constitution, whereby a member of the Seimas may be appointed only either as the Prime Minister or a minister, is an exception established in the Constitution where the same person may simultaneously perform functions in implementing both legislative power (as a member of the Seimas) and executive power (as a member of the Government – the Prime Minister or a minister).

The reciprocal control and balance of the institutions of state power, as well as cooperation among the institutions of state power

The Constitutional Court's ruling of 9 May 2006

... The Constitutional Court has held that, when the general functions and tasks of the state are performed, there exists interfunctional partnership, as well as reciprocal control and balance, among state institutions (rulings of 10 January 1998 and 21 April 1998).

It should be emphasised that interaction among the branches of state power may not be treated as their conflict or competition; thus, the checks and balances that the judicial branch (institutions thereof) and other branches of state power (institutions thereof) have towards each other may not be seen as the mechanisms of the opposition of the branches of power. The constitutionally consolidated model of interaction among the branches of state power is also defined by the reciprocal control and balance of the branches of state power (institutions thereof); such reciprocal control and balance does not allow a certain branch of state power to dominate in respect of another branch of state power (or in respect of the other branches of state power); the said model of interaction is also defined by cooperation among the branches of state power, of course, where such cooperation does not overstep the limits established in the Constitution, i.e. does not interfere in the implementation of the powers of another branch of state power.

Parliamentary democracy; interaction among the branches of state power; and parliamentary control

The Constitutional Court's decision of 21 November 2006

The Constitution consolidates parliamentary democracy. However, parliamentary democracy is not “the convent rule”; it is not a system where the parliament directly organises the work of other state or municipal institutions or may, at any time, interfere with the activities of any state or municipal institutions (officials thereof) that implement public power. Nor is parliamentary democracy a system where the parliament, at the slightest pretext, may exert control over any decisions of such institutions (officials thereof), initiate the application of sanctions against certain persons, let alone adopt decisions by itself for the state or municipal institutions (officials thereof) that have particular competence, i.e. adopt such decisions that can be adopted only by the state institutions (officials thereof) that have particular competence as, for example, courts, prosecutors, the National Audit Office, the institutions of pretrial investigation, or the subjects of operational activity provided for in laws.

The model of parliamentary democracy consolidated in the Constitution is rational and moderate. Such a model is not based exclusively on the control exercised by the parliament or on interinstitutional checks and balances; in parliamentary democracy, interfunctional partnership, which is based, *inter alia*, on trust, plays a role of no less importance. It has been held in the acts of the Constitutional Court that, when the general functions and tasks of the state are performed, there exists interfunctional partnership among state institutions, as well as reciprocal control and balance (rulings of 10 January 1998, 21 April 1998, and 9 May 2006). The Constitutional Court has also held that “interaction among the branches of state power may not be treated as their conflict or competition; thus, also the checks and balances that the judicial branch (institutions thereof) and other branches of state power (institutions thereof) have towards each other may not be treated as the mechanisms of the opposition of the branches of power” (ruling of 9 May 2006).

A different interpretation of the provisions of the Constitution that consolidate the control function performed by the Seimas (*inter alia*, the provisions substantiating the possibility of forming ad hoc investigation commissions of the Seimas) would unavoidably deny the constitutional principles of responsible governance, the separation of powers, a state under the rule of law, and democracy, as well as the striving for an open, harmonious, and just civil society, as proclaimed in the Preamble to the Constitution; such a different interpretation would create the preconditions for instability in the governance of the state and in the management of public affairs, as well as the preconditions for violating the rights and freedoms, as well as the legitimate interests and legitimate expectations, of a person and for violating other values consolidated, defended, and protected by the Constitution.

The assignment to regulate certain relations that is given by the legislature to the Government or to an institution authorised by it

See 1.8. The foundations of lawmaking and of the application of law, 1.8.1. General provisions, the ruling of 5 May 2007.

The principle of the separation of powers

The Constitutional Court's ruling of 13 May 2010

Paragraph 1 of Article 5 of the Constitution provides that, in Lithuania, state power is executed by the Seimas, the President of the Republic and the Government, and the judiciary.

This provision of the Constitution constitutes the basis for the separation and balance of the branches of state power (ruling of 20 April 1999).

[...]

In its rulings, the Constitutional Court has held on more than one occasion that Article 5 of the Constitution (as well as other articles of the Constitution that establish the powers of state institutions exercising state power) consolidates the principle of the separation of powers.

[...]

... those particularities of the constitutional status of the Seimas, the President of the Republic, the Government, and the judiciary that are related to the exercise of state power and the separation of state

powers imply, *inter alia*, that these institutions may not take over the constitutional powers that belong to other institutions; thus, also courts, to which persons concerned apply with petitions requesting an investigation into the acts adopted by the Seimas, the President of the Republic, or the Government or into activities otherwise expressed by these institutions, may not take over the constitutional powers of the Seimas, the President of the Republic, or the Government, i.e. courts may not adopt decisions for these institutions of state power and may not obligate the said institutions of state power to pass acts related to the exercise of state power.

The principle of the separation of powers

The Constitutional Court's ruling of 29 September 2015

The constitutional principle of a state under the rule of law is related to the constitutional principle of the separation of powers, which is consolidated, *inter alia*, in Paragraph 2 of Article 5 of the Constitution. The said paragraph provides that the scope of powers is limited by the Constitution. The Constitutional Court has noted in its acts on more than one occasion that the constitutional principle of the separation of powers is the fundamental principle of the organisation and functioning of a democratic state under the rule of law (*inter alia*, the rulings of 10 January 1998, 13 May 2004, and 24 September 2009); the constitutional principle of the separation of powers means, among other things, that, if the Constitution directly establishes the powers of a concrete state authority institution, such an institution may not waive these powers and may not transfer them to some other institution, while other state authority institutions may not take over such powers; the said powers may not be changed or limited by means of a law (*inter alia*, the rulings of 23 August 2005 and 26 February 2010). The Constitutional Court has also emphasised on more than one occasion that the Seimas has no right to assign the Government or any other institution to exercise the constitutional competence of the Seimas (*inter alia*, the rulings of 14 January 2002, 2 March 2009, and 26 May 2015). The provision “The scope of power shall be limited by the Constitution” of Paragraph 2 of Article 5 of the Constitution is violated if such a legal regulation is established whereby the powers of a state authority institution specified in Paragraph 1 of Article 5 of the Constitution or those of any other authority institution are broadened in a constitutionally unreasonable manner (*inter alia*, the rulings of 13 December 2004, 2 March 2009, and 26 May 2015).

1.6. THE SCOPE OF POWERS LIMITED BY THE CONSTITUTION

The scope of powers is limited by the Constitution; the prohibition on taking over, transferring, waiving, and changing or limiting, by means of a law, the powers of a state authority institution that are directly established in the Constitution (Paragraph 2 of Article 5 of the Constitution)

The Constitutional Court's ruling of 21 December 1999

Paragraph 2 of Article 5 of the Constitution prescribes: “The scope of power shall be limited by the Constitution.”

This norm consolidates an important constitutional principle, which must be taken into account when the powers of state authority institutions are established both in the sphere of relationships between state authorities and a person and in the sphere of interrelations among state authority institutions. Interpreting the principle established in Paragraph 2 of Article 5 of the Constitution from the said aspect, in its ruling of 3 June 1999, the Constitutional Court held that this constitutional principle also means that, “in cases where the powers of a particular state authority institution are directly established in the Constitution, no other institution may take over such powers from it; while an institution whose powers are defined in the Constitution may neither transfer nor waive these powers. Such powers may not be changed or limited by means of a law”. It is necessary to observe these requirements in order to ensure harmony in the functioning of state authority institutions.

The scope of powers is limited by the Constitution (Paragraph 2 of Article 5 of the Constitution)

The Constitutional Court's ruling of 24 January 2003

Paragraph 2 of Article 5 of the Constitution provides that the scope of powers is limited by the Constitution.

Interpreting this provision of Paragraph 2 of Article 5 of the Constitution, the Constitutional Court noted: “When drafting and adopting legal acts, institutions of state power must comply with the principle of a state under the rule of law, which is consolidated in the Constitution. Paragraph 2 of Article 5 of the Constitution provides that the scope of powers is limited by the Constitution. This means that the Seimas, as the legislator of laws and other legal acts, is autonomous inasmuch as its powers are not limited by the Constitution” (ruling of 12 July 2001).

The scope of powers is limited by the Constitution (Paragraph 2 of Article 5 of the Constitution)

The Constitutional Court’s ruling of 13 May 2004

... Paragraph 2 of Article 5 of the Constitution reflects not only the constitutional principle of the separation of powers, but also the principle of the supremacy of the Constitution and the constitutional principle of a state under the rule of law (rulings of 12 July 2001, 24 December 2002, and 24 January 2003).

The scope of powers is limited by the Constitution (Paragraph 2 of Article 5 of the Constitution)

The Constitutional Court’s ruling of 13 December 2004

The constitutional principle of the separation of powers is also inseparable from the provision of Paragraph 2 of Article 5 of the Constitution, whereby the scope of powers is limited by the Constitution, which is binding not only on the state power institutions specified in Paragraph 1 of Article 5 of the Constitution, but also on other institutions that have authoritative powers, but are not categorised as belonging to the legislative, the executive, or the judicial branch, including on all state servants employed in these institutions.

The scope of powers is limited by the Constitution (Paragraph 2 of Article 5 of the Constitution)

The Constitutional Court’s ruling of 29 September 2015

... The provision “the scope of power shall be limited by the Constitution” of Paragraph 2 of Article 5 of the Constitution is violated if such a legal regulation is established whereby the powers of a state authority institution specified in Paragraph 1 of Article 5 of the Constitution or those of any other authority institution are broadened in a constitutionally unreasonable manner (*inter alia*, the rulings of 13 December 2004, 2 March 2009, and 26 May 2015).

The scope of powers is limited by the Constitution and state institutions serve the people; the principles of responsible governance and transparency (Paragraphs 2 and 3 of Article 5 of the Constitution)

The Constitutional Court’s ruling of 12 April 2018

The constitutional principle of a state under the rule of law is also reflected in Paragraphs 2 and 3 of Article 5 of the Constitution, which stipulate that the scope of powers is limited by the Constitution and that state institutions serve the people and which consolidate the constitutional principles of responsible governance and the responsibility of state authorities to society.

As the Constitutional Court has held on more than one occasion, the constitutionally consolidated principle of responsible governance implies that all state institutions and officials are obliged to follow the Constitution and law while performing their functions and must properly implement the powers granted to them by the Constitution and laws while acting in the interests of the People and the State of Lithuania (*inter alia*, the rulings of 19 November 2015, 8 July 2016, and 2 March 2018).

It should be noted that the constitutional principle of responsible governance, interpreted in conjunction with the imperative obliging state institutions to serve the people, as consolidated in Paragraph 3 of Article 5 of the Constitution, implies the publicity and transparency requirements for law-

making procedures; these requirements must be followed, *inter alia*, by institutions exercising state power (ruling of 8 July 2016).

In its ruling of 8 March 2018, interpreting, among other things, the content of one of the principles governing the activity of public authorities and officials – the principle of transparency, arising from the Constitution, *inter alia*, Paragraphs 2 and 3 of Article 5 thereof, the Constitutional Court noted that this principle implies accountability to the respective community and the responsibility of decision-making officials for their decisions; adopted decisions must be reasoned and clear so that, if the need arises, it would be possible to provide rational reasons for them. Transparency is a necessary precondition, *inter alia*, for preventing the abuse of power; therefore, it is also a necessary precondition for people to have trust in public authorities and the state in general (rulings of 22 January 2008 and 8 March 2018).

1.7. LITHUANIAN AS THE STATE LANGUAGE

The constitutional status of the state language (Article 14 of the Constitution)

The Constitutional Court's ruling of 21 October 1999

Under Article 14 of the Constitution, Lithuanian is the state language. The establishment of the status of the state language in the Constitution means that Lithuanian is a constitutional value. The state language protects the identity of the nation, it integrates the civil nation, it ensures the expression of national sovereignty, the integrity and indivisibility of the state, and the smooth functioning of state and municipal establishments. The state language is an important guarantee of the equality of the rights of citizens, as it enables all citizens under the same conditions to communicate with state and municipal establishments and to implement their rights and legitimate interests. The constitutional establishment of the status of the state language also means that the legislature must, by means of laws, establish how the use of this language is ensured in public life and, in addition, it must provide for the means of the protection of the state language. Lithuanian, after it has acquired the status of the state language under the Constitution, must be used in all state and local government institutions and in all establishments, enterprises, and organisations that are in Lithuania; laws and other legal acts must be published in the state language; clerical work, accounting, accountabilities, and financial papers must be in Lithuanian; state and local government institutions, establishments, enterprises, and organisations correspond with each other in the state language.

The Constitutional Court emphasises that the constitutional status of the state language means that Lithuanian is compulsory only in the public life of Lithuania. In other spheres of life, persons may use any language acceptable to them without restrictions.

Taking account of the fact that the passport of a citizen of the Republic of Lithuania is an official document certifying a permanent legal link between an individual and the state, i.e. the citizenship of an individual, and the fact that citizenship relationships belong to the sphere of the public life of the state, the name and family name of a person must be written in the passport of a citizen in the state language. Otherwise, the constitutional status of the state language would be denied.

The knowledge of the state language is a condition for the fully fledged participation of citizens in the governance of the state

The Constitutional Court's ruling of 10 May 2006

... according to the Constitution, the Lithuanian language, as the state language, is a means of public expression and internal communication of state and municipal institutions, as well as a means of communication with members of society. It is an important element of statehood, a factor uniting all citizens of the Republic of Lithuania, integrating the national community – the civil Nation, because it ensures equal opportunities for all citizens of the state to participate in the governance of their country and in making decisions of national importance, also the right to enter state service on equal terms. The knowledge of the state language is a prerequisite and a necessary condition for the fully fledged participation of citizens in the governance of the state.

Using the state language in adopting the decisions of national importance

The Constitutional Court's ruling of 10 May 2006

Making the decisions of national importance, *inter alia*, when citizens of the Republic of Lithuania vote in referendums, during which, as established in Paragraph 1 of Article 9 of the Constitution, the most significant issues concerning the life of the State and the Nation are decided, is an exceptional sphere of the use of the state language. The knowledge of the state language is also a precondition for implementing the constitutional right of every citizen of the Republic of Lithuania to vote in referendums. The Constitution does not imply that citizens who do not know the state language must be or can be provided with any special or facilitated conditions for participating in the governance of their country, *inter alia*, that such citizens must, in some way, be even additionally and artificially encouraged to participate in referendums or other votes in which the decisions of national importance are made.

Due to this, referendum ballot-papers must be printed only in the state language. Otherwise, the constitutional concept of the state language, which presupposes precisely the use of the state language when making the decisions of national importance, would be ignored; in addition, the imperative of civic consciousness, which stems from the Constitution, and the concept of the national community – the civil Nation, which is established in the Constitution, would be deviated from.

Moreover, it is generally recognised that, in referendum ballot-papers, no matter on what issue a referendum is conducted, questions must be formulated in the manner ensuring that they are understandable to every voter. ... it should be noted that, as regards the linguistic expression, these questions are not complicated or confusing and do not require voters to possess any special language knowledge. During referendums, voters are presented a certain question, which, from the linguistic point of view, is neither complicated nor confusingly formulated and must be answered only by “yes” or “no”. If there is more than one question, each question in a referendum ballot-paper must be formulated separately and every question must be answered separately. It is very doubtful whether a citizen who does not understand a question (questions) that is (are) formulated in such a simple way, precisely because he/she does not know the state language, has enough information about the public life in the Republic of Lithuania so that he/she could make a rational decision on how to answer a referendum question; in fact, it would be hardly possible or impossible at all to argue that such a citizen (maybe save certain exceptions) is capable of understanding the goals of the Nation and is ready to take responsibility for the present and future of the State of Lithuania. Encouraging such citizens artificially and additionally so that they participate in referendums or other votes during which the decisions of national importance are made (also creating the possibilities for them during a referendum to express their will not in the state language, which they do not know) would be equivalent to entrusting, to a certain extent, decision making on the particular issues of national significance to the people who ... are not sufficiently integrated into the society of Lithuania, are not fully fledged members of the national community – the civil Nation (and do not make effort to become such members), and lack civic consciousness.

The interpretation of Article 14 of the Constitution provided in this ruling of the Constitutional Court (and based on, *inter alia*, the jurisprudence of the Constitutional Court formulated in the previous constitutional justice cases) and the requirement, arising from such interpretation (and from the constitutional concept of civic consciousness and the national community – the civil Nation), to print referendum ballot-papers only in the state language are completely compatible with the provision of Article 37 of the Constitution, whereby citizens belonging to ethnic communities have the right to foster their language, culture, and customs, as well as with the provisions of Article 45 of the Constitution, which state that ethnic communities of citizens independently manage the affairs of their ethnic culture, education, charity, and mutual assistance, and that ethnic communities are provided support by the state, because these provisions, establishing the right of ethnic communities to foster their culture, customs, and language, and to be provided support by the state, do not mean that their interests and the common interests of the State of Lithuania, in the territory of which the respective ethnic communities reside, or the common interests of all society and the civil Nation, may be opposed. The constitutional consolidation of the state language, as well as the requirement to pay regard to the constitutional imperative of the state language, *inter alia*, when

the decisions of national importance are made, may not be interpreted as violating the rights of national minorities. On the contrary ... the knowledge of the state language ensures the equality of the rights of all citizens of the state. As it was stated in the Constitutional Court's ruling of 13 December 2004, "the nationality of an individual (including in the relationships with the officials or state servants of a state or municipal institution) may not serve as a basis for him/her to demand that the rules arising from the status of the state language be not applied as far as he/she is concerned; otherwise, the constitutional principle of the equality of all persons before the law, courts, state institutions, and officials would be violated".

The entry of the name and family name of an individual in the state language in his/her passport is the official confirmation of the identity of the individual

The Constitutional Court's decision of 6 November 2009

... the name and family name of an individual must be written in the state language in the passport of the Republic of Lithuania, and ... only the entry of the name and family name of an individual in the state language is the official confirmation of the identity of the individual, which gives rise to particular legal effects linked to the use of the name and family name of the individual in public life in Lithuania.

It is generally known that, in addition to the section wherein the data confirming the identity of an individual are entered (first of all, the name and family name of an individual), there are sections designed for entering additional data about the individual or for placing required markings (in fact, in these sections, often not only the state (official) language is used). This is also characteristic of the passport of a citizen of the Republic of Lithuania.

It needs to be noted that, if, in the passport of a citizen of the Republic of Lithuania, the name and family name of an individual were entered in non-Lithuanian characters and in non-grammaticised form in the section designed for other entries in cases where the said individual so requests, the official confirmation of the identity of this individual in the state language would remain in the passport of this citizen. At the same time, it needs to be noted that the entry of the name and family name of an individual in non-Lithuanian characters in the section designed for other entries in his/her passport should not be made equal to the entry regarding the identity of this individual in the state language.

In the said cases, there would be no grounds for maintaining that entering the name and family name of an individual in non-Lithuanian characters and in non-grammaticised form in the section designed for other entries in his/her passport in cases where the individual so requests would deny the imperatives requiring that "the name and family name of an individual must be written in the state language" and that the state language must be used in public life, which arise from the Constitution.

Thus, the legislature, on stipulating that the name and family name of an individual are written in Lithuanian characters in the passport of a citizen of the Republic of Lithuania, also has the discretion to stipulate that it is allowed to enter the name and family name of an individual in non-Lithuanian characters and in non-grammaticised form in the section designed for other entries in his/her passport in cases where the individual so requests. In such a case, the legislature should establish the grounds for writing names and family names in a non-state language in the section designed for other entries in the passport of a citizen of the Republic of Lithuania, *inter alia*, as to what objective criteria should be followed in order that the name and family name of an individual can be entered in non-Lithuanian characters and in non-grammaticised form in the section designed for other entries in the passport of a citizen of the Republic of Lithuania.

When establishing the grounds for writing the name and family name of an individual in a non-state language in the section designed for other entries in the passport of a citizen of the Republic of Lithuania, the legislature should pay regard to the fact that ... the basis of the characters of the Lithuanian language, as the state language of Lithuania, as well as of an absolute majority of the state (official) languages of European countries, is Latin characters.

Writing names and family names in the passports of citizens

The Constitutional Court's decision of 27 February 2014

In its decision of 6 November 2009, the Constitutional Court, interpreting its [ruling of 21 October 1991], noted that, “under the Constitution, Lithuanian characters and essential issues related to their use, *inter alia*, the principles of a particular transcription, must be defined by the legislature or a state institution authorised by it”.

In this context, it should be mentioned that, under [the law] ... the State Commission of the Lithuanian Language (*Valstybinė lietuvių kalbos komisija*, hereinafter also referred to as the VLKK) is such an authorised state institution.

[...]

... where, in establishing the legal regulation in relation to writing the name and family name of a person in the passport of a citizen of the Republic of Lithuania, the legislature requires expert knowledge, it must receive an official conclusion, *inter alia*, an explicit position and clear proposals, from persons (institutions) having special knowledge or special (professional) competence, *inter alia*, from a state institution, composed, under the laws of the Republic of Lithuania, of professional linguists – Lithuanian language specialists (and, to the extent permitted by laws, also of representatives of other branches of linguistics), which has the powers to take care of the protection of the state language, to establish, within its competence, the guidelines on the state language policy (or to propose that the respective legislative and executive institutions establish the said guidelines by means of legal acts they adopt), and to carry out the state language policy (at present, from the VLKK – the institution specified in the law). When deciding on how the name and family name of a person must be written in the passport of a citizen of the Republic of Lithuania, the legislature may not disregard the received official conclusions, including the official conclusion of the VLKK and its position (proposals).

[...]

... under the Constitution, the legislature or a state institution authorised by it, when defining the essential issues concerning the use of the state language, *inter alia*, when establishing the rules of writing the names and family names of citizens of the Republic of Lithuania in the passports of citizens of the Republic of Lithuania, must pay regard to the constitutional imperative of the protection of the state Lithuanian language and assess any potential danger for the common Lithuanian language and the distinctiveness of the Lithuanian language. Under the Constitution, it should not be tolerated that these rules, *inter alia*, consolidating the writing of non-Lithuanian personal names (name and family name) in the passport of a citizen of the Republic of Lithuania, would be established without having assessed their impact on the common Lithuanian language and the distinctiveness of the Lithuanian language, *inter alia*, on the writing of Lithuanian personal names.

[...]

... the VLKK must submit an official conclusion on whether it is also possible to establish such rules of writing the name and family name of a person in the passport of a citizen of the Republic of Lithuania that are ... other than [those whereby the name and family name of a person is written in the passport of a citizen in Lithuanian characters and according to pronunciation], *inter alia*, on whether the formulation “in the state language” in the constitutional requirement that “the name and family name of a person must be written in the passport of a citizen in the state language” and the expression “in Lithuanian characters” may be understood as meaning that, in certain cases, when writing non-Lithuanian names and family names in the passports of citizens of the Republic of Lithuania, it is possible to use not only the letters of the Lithuanian alphabet, but also other exclusively Latin-based characters to the extent that they are consistent with the tradition of the Lithuanian language and do not violate the system of the Lithuanian language and the distinctiveness of the Lithuanian language.

It should be noted that the VLKK must submit an official conclusion also in those cases where legal acts prepared by other law-making subjects in relation to writing the name and family name of a person in the passport of a citizen of the Republic of Lithuania are under deliberation.

In this context, it should also be noted that the Constitutional Court has held on more than one occasion that, under the Constitution, a legal regulation related to defining the content of human rights and freedoms or consolidating the guarantees of their implementation may be established only by means of a law.

Therefore, the essential rules of writing the name and family name of a person in the passport of a citizen of the Republic of Lithuania must be established by means of a law.

... following the requirements stemming from the Constitution, *inter alia*, Article 14 thereof, it is also possible to establish, by means of a law, such rules of writing the name and family name of a person in the passport of a citizen of the Republic of Lithuania that are ... other than [those whereby the name and family name of a person is written in the passport of a citizen in Lithuanian characters and according to pronunciation] in cases where a change in these rules is proposed by a state institution composed, under the laws of the Republic of Lithuania, of professional linguists – Lithuanian language specialists (and, to the extent permitted by laws, also of representatives of other branches of linguistics), which has the powers to take care of the protection of the state language.

1.8. THE FOUNDATIONS OF LAWMAKING AND OF THE APPLICATION OF LAW

1.8.1. General provisions

The official publication of laws; laws do not have retroactive effect (Paragraph 2 of Article 7 of the Constitution)

The Constitutional Court's ruling of 11 January 2001

Paragraph 2 of Article 7 of the Constitution prescribes: "Only laws that are published shall be valid."

This constitutional norm means that laws are not valid and may not be applied unless they are officially published. The official publication of laws in accordance with the procedure established in the Constitution and laws is a necessary condition not only in order that laws would come into force, but also in order that subjects of legal relationships would know which laws are valid and what their content is and would comply with these laws. There may not be any non-published laws in a democratic state.

Paragraph 2 of Article 7 of the Constitution also reflects the legal principle that the effect of published laws is prospective and that these laws do not have retroactive effect (*lex retro non agit*). Thus, laws are applied to the facts and consequences that take place after these laws come into force. The requirement that the effect of published laws must be prospective and that these laws must not have retroactive effect is an important precondition for legal certainty and an essential element of [the principle of a state under the rule of law].

At the same time, it needs to be noted that the legal principle that the effect of published laws is prospective and that these laws do not have retroactive effect should be linked with the constitutional principles of justice and humanism. The Constitutional Court has held that the adopted laws abolishing the criminalisation of a certain act or mitigating responsibility for a certain act have retroactive effect (*lex benignior retro agit*) (ruling of 25 March 1998).

The legal force of legal acts is prospective; law must be public

The Constitutional Court's ruling of 29 November 2001

The principle of a state under the rule of law is consolidated in the Constitution. One of the elements of the principle of a state under the rule of law is that the legal force of legal acts is prospective. In its ruling of 16 March 1994, the Constitutional Court held the following: "The legal force of a law or another legal act is prospective. It is not allowed to require that a certain person obey such rules that did not exist at the time when he/she performed the respective actions; therefore, such a person was unable to know the requirements that could be imposed in the future." The requirement that only published legal acts are effective is also an essential element of the principle of a state under the rule of law. Law must be public. The constitutional requirements that only published legal acts are effective and that they must be prospective are an important precondition for legal certainty.

The publication of legal acts is a necessary condition for their validity (Paragraph 2 of Article 7 of the Constitution)

The Constitutional Court's ruling of 29 October 2003

According to Paragraph 2 of Article 7 of the Constitution, the publication of laws must allow legal subjects to be certain that the published law is exactly the law that has been adopted by the Seimas or by referendum. Such publication of laws is considered to be their official publication.

[...]

Laws must be published so that all legal subjects could have access to them. The constitutional requirement that only laws that are published can be valid is an important precondition for legal certainty. This constitutional requirement is inseparable from the constitutional principle of a state under the rule of law.

The constitutional principle that law must be public is reflected in Paragraph 2 of Article 7 of the Constitution.

[...]

... only those legal acts that are published according to the requirements of official publication and publicity, which are consolidated in the Constitution, as well as according to the constitutional requirement that an entire legal act (all its constituent parts) must be published and the constitutional requirement that legal acts must be published in the Lithuanian state language, may be declared to be in compliance with the requirements of Paragraph 2 of Article 7 of the Constitution and, therefore, valid.

The presumption of the constitutionality and legitimacy of legal acts*The Constitutional Court's ruling of 13 December 2004*

... The trust of a person in the state and law and the protection of legitimate interests, as constitutional values, are inseparable from the presumption of the constitutionality and legitimacy of legal acts. Legal acts (parts thereof) are considered to be in compliance with the Constitution and legitimate until the moment when, according to the procedure established by the Constitution and the Law on the Constitutional Court, they are ruled to be in conflict with the Constitution (or in conflict with the Constitution and/or laws if the said legal acts are substatutory). Thus, until the moment when legal acts (parts thereof), according to the procedure established by the Law on the Constitutional Court, are ruled to be in conflict with the Constitution (or in conflict with the Constitution and/or laws if the said legal acts are substatutory) or until the moment when, according to the established procedure, they are declared no longer effective, the legal regulation established therein is binding on the respective subjects of legal relationships. The Constitution protects and defends a person who obeys law and follows the requirements of laws. Failure to pay regard to this provision would also mean derogation from the principle of justice, which is consolidated in the Constitution.

The requirements stemming from the principle of a state under the rule of law for law-making subjects*The Constitutional Court's ruling of 13 December 2004*

The constitutional principle of a state under the rule of law implies various requirements for the legislature and other law-making subjects: law-making subjects are allowed to pass legal acts only without exceeding their powers; the requirements established in legal acts must be based on general provisions (i.e. certain legal norms and principles) that could be applied to all envisaged subjects of certain legal relationships; any differentiated legal regulation must be based only on the objective differences in the situation of the subjects of certain social relationships regulated by the respective legal acts; in order to ensure that the subjects of legal relationships are aware of the requirements set with respect to them by law, legal norms must be established in advance, legal acts must be published officially, and such acts must be public and accessible; a legal regulation established in laws and other legal acts must be clear, comprehensible, and coherent; the formulations in legal acts must be precise; the consistency and internal harmony of the legal system must be ensured; and legal acts may not contain provisions simultaneously regulating the same social relationships in a different manner; in order that the subjects of legal relationships could act in accordance with the requirements of law, a legal regulation must be relatively

stable; legal acts may not demand impossible things (*lex non cogit ad impossibilia*); the effect of legal acts is prospective, whereas the retroactive effect of laws and other legal acts is not permitted (*lex retro non agit*), unless the situation of a subject of legal relationships would be alleviated without prejudice to other subjects of legal relationships (*lex benignior retro agit*); those violations of law for which responsibility is established in legal acts must be clearly defined; when imposing legal restrictions and responsibility for violations of law, regard must be paid to the requirement of reasonableness and the principle of proportionality; according to the principle of proportionality, the established legal measures must be necessary in a democratic society and suitable for achieving legitimate and universally important objectives (there must be a balance between such objectives and measures); these measures may not restrict the rights of persons more than necessary in order to achieve the said objectives and, if those legal measures are related to sanctions for a violation of law, in such a case, the said sanctions must be proportionate to the committed violation of law; when legally regulating certain social relationships, it is obligatory to pay regard to the requirements of natural justice, comprising, *inter alia*, the necessity to ensure the equality of persons before the law, courts, state institutions, and officials; legal acts must be passed in accordance with the established procedural law-making requirements, including the requirements established by the law-making subject itself; etc.

The requirements stemming from the principle of a state under the rule of law for law-applying subjects

The Constitutional Court's ruling of 13 December 2004

The constitutional principle of a state under the rule of law must also be followed in applying law. When law is applied, *inter alia*, it is necessary to pay regard to the following requirements arising from the constitutional principle of a state under the rule of law as, for instance: law-applying institutions must comply with the requirement of the equality of the rights of persons; it is not permitted to punish anyone twice for the same violation of law (*non bis in idem*); responsibility (sanction, punishment) for any violations of law must be established in advance (*nulla poena sine lege*); no act is criminal unless it is defined as such by means of a law (*nullum crimen sine lege*), etc. In this context, mention should be made of the fact that the constitutional principle of a state under the rule of law requires that jurisdictional and other law-applying institutions be impartial and independent, that they seek to establish the objective truth, and that they adopt their decisions only on the basis of law (rulings of 11 May 1999, 19 September 2000, and 24 January 2003).

Article 110 of the Constitution provides that judges may not apply any laws that are in conflict with the Constitution. In the light of the hierarchy of legal acts, which stems from the Constitution, this provision of the Constitution also means that judges may not apply any such substatutory legal acts that are in conflict with the Constitution. Moreover, judges may not apply any such substatutory legal acts that are in conflict with a law. On the other hand, the aforementioned provision of the Constitution reflects the constitutional principle – one of the essential elements of the constitutionally consolidated principle of a state under the rule of law – that a legal act that is in conflict with a higher-ranking legal act may not be applied.

It should be noted that laws must be executed until the moment when they are amended or repealed or, according to the procedure established by the Law on the Constitutional Court, ruled to be in conflict with the Constitution (or in conflict with the Constitution and/or laws if the acts declared unconstitutional are substatutory). ... until the moment when laws are amended or, according to the procedure established by the Law on the Constitutional Court, are ruled to be in conflict with the Constitution, all subjects of legal relationships, consequently, including the Government, must execute and apply such laws within their competence; it is not allowed that the Government, which must itself apply laws and/or ensure that other state and municipal institutions and officials apply them, instead of performing the duties established for it by laws and/or ensuring that other state and municipal institutions and officials perform the duties established by laws for them, by means of its substatutory legal acts establish such a legal regulation that would compete with the one established in laws and would completely or partially exempt the Government

and/or other state and municipal institutions and officials from the performance of the aforementioned duties.

[...]

One of the numerous aspects of the constitutional principle of a state under the rule of law (directly related to the constitutional principle of the equality of the rights of persons) is that similar cases must be decided in a similar manner. Therefore, the discretion of jurisdictional institutions, when they resolve disputes and apply law, is limited. In its rulings of 21 July 2001 and 30 May 2003, as well as in its decision of 13 February 2004, the Constitutional Court held that the principle of a state under the rule of law, which is enshrined in the Constitution, implies, *inter alia*, the continuity of jurisprudence.

Establishing exceptions to the general legal regulation

The Constitutional Court's ruling of 12 December 2005

... the establishment of exceptions to a certain general legal regulation may be constitutionally justifiable if these exceptions are aimed at ensuring a constitutionally justifiable and universally important interest, as well as the values protected and defended by the Constitution, and only to the extent sought by these exceptions. The said exceptions must be proportionate to the pursued constitutionally justifiable objective and must not restrict the rights of the subjects concerned more than it is necessary to ensure the said constitutionally justifiable and universally significant interest.

Using legal terminology in legal acts

The Constitutional Court's ruling of 16 January 2006

... the Constitution does not prevent the usage of the words or formulations in laws and other legal acts that are different from those used in the text of the Constitution.

The Constitution, as a legal act, is expressed in a certain textual form and it has certain linguistic expression; however, as law cannot be treated as a mere text, thus, in the same way, the Constitution cannot be treated only as its textual form (ruling of 25 May 2004). In this context, it should be mentioned that language, *inter alia*, legal terminology, is constantly developing. Thus, the requirement that laws and other legal acts must define the same phenomena by always using only the same words and formulations that are found in the Constitution, if such a requirement were made absolute, would mean that, on the one hand, attempts are made to artificially restrict or even stop such development of language, *inter alia*, legal terminology, when laws and other legal acts use not only the words (formulations) other than those used in the text of the Constitution to define the same phenomena, but also new terms (formulations) in general, which did not exist at the time when the text of the Constitution was drafted. On the other hand, such a requirement, if it were made absolute, might provoke the modification of the text of the Constitution according to the terminology (words, formulations) consolidated in laws and other legal acts even in cases where an intervention into the text of the Constitution, which, as supreme law, must be a stable act, is not legally necessary.

Using notions in legal acts

The Constitutional Court's ruling of 24 January 2006

... in legal acts, notions must be used without deviating from the meaning that is typical of them; if they are given specific content, this must be specially discussed in the respective legal act.

The assignment given by the legislature to the Government or to an institution authorised by it to regulate certain relationships

The Constitutional Court's ruling of 5 May 2007

In cases where the Constitution does not require that certain relationships indicated therein be regulated specifically by means of a law and where, under the Constitution, the regulation of such relationships is not within the exclusive competence of other institutions exercising state power, *inter alia*,

the Government, the legislature may also provide in a law that certain relationships are regulated by the Government or an institution authorised by it. In the Lithuanian legislation, such law-making practice where a law prescribes that certain relationships are regulated by the Government or an institution authorised by it is quite widespread.

If the legislature consolidates, in a law, the provision that certain relationships “are regulated by the Government or an institution authorised by it”, this provision means that: the Government has the powers to regulate the relationships specified in the law either by itself or to establish, by its resolution, which institution has the powers to regulate (i.e. which institution may and must regulate) the relationships specified in the law; the Government has the powers to regulate by itself a certain part of the relationships specified in the law; however, the Government may authorise another institution to regulate certain relationships specified *expressis verbis* in the law, as well as those relationships that stem from the relationships specified *expressis verbis* in the law; the Government, when authorising a certain institution to regulate certain relationships, may not assign it also to regulate such relationships that, under the Constitution and laws, may be regulated only by legal acts whose legal force is not less than that of government resolutions.

If regard is paid to the principle of the separation of powers and the requirements that stem from it, *inter alia*, the requirement not to regulate certain relationships by means of substatutory legal acts if, under the Constitution, such relationships must be regulated only by means of a law, if regard is paid to the prohibition on transferring to other institutions the powers that, under the Constitution, are the exclusive competence of the Government, and if regard is paid to the prohibition on transferring to other institutions the regulation of such relationships that, under the Constitution and laws, must be regulated by legal acts whose legal force is not less than that of government resolutions, then the aforementioned law-making practice as such is not inconsistent with the Constitution. However, in this context, it should be noted that the constitutional principle of a state under the rule of law also means that, if the legislature stipulates in a law that certain relationships are regulated by the Government or an institution authorised by it, then the Government, when adopting a resolution by which it authorises a particular institution to regulate certain relationships, may authorise that the said relationships be regulated only by such an institution that performs such functions and/or has such other powers that are linked to the regulation of the relationships assigned to it by the government resolution (or are closely related to such a regulation). Also, a legal regulation would not be in conflict with the Constitution if, under that legal regulation, the Government, while complying with the requirements and procedure established by laws, would establish (if a necessity arises) a state institution and would assign it to regulate the relationships envisaged in the law, provided that the Government or the institution authorised by it has, under the law, the powers to regulate such relationships. It should also be noted that, in cases where the legislature consolidates in a law that certain relationships are regulated by the Government or an institution authorised by it and where such a need for a substatutory regulation of relationships is determined by the necessity to rely on special knowledge or special (professional) competence in the course of lawmaking, the constitutional principle of a state under the rule of law also implies that, when the Government adopts a resolution whereby it authorises the respective institution to regulate certain relationships, such an institution must be the one that has this special (professional) competence necessary for regulating the relationships assigned to it by the government resolution.

The official publication of legal acts (Paragraph 2 of Article 7 of the Constitution)

The Constitutional Court's ruling of 27 June 2007

In its acts, when interpreting Paragraph 2 of Article 7 of the Constitution, the Constitutional Court held that: laws are not valid and may not be applied unless they are officially published (ruling of 11 January 2001); the official publication of laws is a necessary condition of their entry into force (ruling of 19 June 2002); there must be established, by means of a law, the procedure for publishing laws and the source of the publication of laws (ruling of 29 October 2003); the publication of laws must allow legal subjects to be certain that the published law is exactly the law that has been adopted by the Seimas or by

referendum; such publication of laws is their official publication (ruling of 29 October 2003); the official publication of laws in accordance with the procedure established in the Constitution and laws is a necessary condition not only in order that laws would come into force, but also in order that subjects of legal relationships would know which laws are valid and what their content is and would comply with these laws (rulings of 11 January 2001 and 29 October 2003); there may not be any non-published laws in a democratic state under the rule of law (rulings of 11 January 2001 and 29 October 2003); laws must be officially published (ruling of 29 October 2003); law must be public (rulings of 29 November 2001, 30 May 2003, and 29 October 2003).

The Constitutional Court has also held that, taking account of the constitutional requirement that law must be public, the notion “laws”, which is employed in Paragraph 2 of Article 7 of the Constitution, should not be interpreted only literally – it should be interpreted in an expanding manner as the notion that includes not only legal acts that have the legal force of a law, but also other legal acts (ruling of 29 October 2003). It was also held that the constitutional requirement that only legal acts that are published can be valid is also inseparable from the constitutional principle of a state under the rule of law and is one of the essential elements of the constitutional principle of a state under the rule of law and an important precondition for legal certainty (rulings of 29 November 2001, 30 May 2003, and 29 October 2003).

The text of a legal act may include various elements – not only normative provisions (norms, principles), which consolidate the rules of the conduct and the limits of freedom of the conduct of legal subjects, but also descriptive statements or graphic images (pictures or other visual information), which fix the existing situation and state certain legally significant facts.

[...]

Government resolutions, as well as other legal acts, may differ according to the form, content, structure, or volume and may have various constituent parts (appendices). A legal act may include not only textual, but also graphical parts (tables, drawings, schemes, plans, cartograms, symbols, emblems, etc.). As the Constitutional Court held in its ruling of 29 October 2003, all parts of a normative legal act (including appendices) constitute a whole; they are inseparably interconnected and have equal legal force; a legal act and its appendices may not be separated, because, on changing the content specifically established in appendices, the content of the entire normative legal act is also changed; an entire legal act with all its constituent parts must be published; only those legal acts that are published according to the requirements of official publication and publicity, which are consolidated in the Constitution, as well as according to the constitutional requirement that an entire legal act (all its constituent parts) must be published, may be declared to be in compliance with the requirements of Paragraph 2 of Article 7 of the Constitution and, therefore, valid.

The official publication of an entire legal act is not an objective in itself – this is necessary in order that legal subjects would know what a particular legal act is and that they could have access to an entire legal act and could comply with it. Thus, the purpose and essence of the official publication of an entire legal act is that it becomes accessible to legal subjects and no doubts remain regarding the authenticity of its content. The legislature must, by means of a law, establish such a legal regulation of the relationships in connection with the official publication of legal acts that ensures that legal acts are accessible to all legal subjects. When doing so, the legislature has broad discretion: taking account of the content, particularities, and variety of legal acts, as well as of other significant circumstances, it may establish various sources and ways of the official publication of legal acts. In this context, it needs to be mentioned that, as the Constitutional Court held in its ruling of 29 October 2003, the Constitution does not *expressis verbis* establish any sources of the official publication of legal acts, nor all possible ways of their publication – the legislature must establish this by means of a law; in regulating these relationships, the legislature may establish a differentiated legal regulation; when establishing it, the legislature must, in all cases, pay regard to the Constitution.

... when establishing the sources and ways of the official publication of legal acts, the legislature must take account of the technical possibilities of publishing legal acts in a certain way. In this context, it also needs to be mentioned that, as it was held by the Constitutional Court, fast technological development

determines the dynamism of the legal acts regulating the respective social relationships (ruling of 21 December 2006) and that “electronic communications and telecommunications are undergoing particularly fast development”; thus, “the possibilities of seeking, obtaining, and disseminating information by means of electronic information technologies, *inter alia*, the internet, are constantly expanding”; “therefore, it is necessary that legislation does not fall behind the progress of information technologies and changes determined by such progress in the respective social relationships” (rulings of 19 September 2005 and 21 December 2006). These provisions are also *mutatis mutandis* applicable to the publication of legal acts.

Whatever advanced technologies are applied in the official publication of legal acts, in all cases not only the authenticity of the content of such legal acts must be ensured (thus, it must also be guaranteed that the content of a legal act will not be deleted, changed, etc.), but also it is necessary to ensure its accessibility to legal subjects. For instance, the mere fact that legal acts are published on the internet may not guarantee their accessibility, thus, also the publicity of law, if the technical possibilities of using the internet for the widest possible strata of society are not ensured or if it costs too much for people.

... when establishing the sources and ways of the official publication of legal acts, the legislature may take account of the expenses of the publication of legal acts and the financial capacities of the state. In this connection, regard must be paid to the arguments of rationality.

On the other hand, legal acts must not be officially published in such a manner that, for the purpose of saving taxpayers' funds necessary in order to officially publish them as widely as possible, the accessibility of certain legal acts to legal subjects would become restricted, let alone that the access of some legal acts to them would altogether become difficult.

The discussed and other circumstances that determine the necessity to establish a differentiated legal regulation of the official publication of legal acts may imply that there is no necessary need to officially publish an entire legal act (with all constituent parts thereof) in the same source (publication), even though it must be published in its entirety (with all constituent parts thereof). However, it should be emphasised that this does not mean that a certain part of the said legal act may remain not published (non-public) at all or that a certain part (parts) thereof may be published in such a way that its accessibility (thus, also the accessibility of the entire legal act as a whole) to legal subjects would be restricted. The possibility of the official publication of the constituent parts of a legal act not in the same source must be based on a legal regulation established by means of a law. It also needs to be noted that, in order to ensure the clarity and comprehensibility of law and, thus, also the clarity and comprehensibility of the system of legal acts, it is required that every case where the constituent parts of a legal act are officially published not in the same source could be constitutionally justifiable.

Thus, in cases where legal acts include not only textual (written), but also graphical parts (drawings, etc.), especially if such legal acts are of a large volume and complex structure and serious technical problems occur regarding the publication (printing, reproduction) of their graphical parts (also if the expenses of their publication (printing, reproduction) are groundlessly high (taking account of the financial capacities of the state, as well as of the fact for what circle of legal subjects the respective legal regulation establishes particular rights and duties)), the legislature may establish, by means of a law, such a procedure of the official publication of these legal acts that differs from the general (regular) official procedure of the publication of legal acts that are composed only of written text. In itself, the Constitution does not prohibit it. For instance, a law may prescribe that the graphical parts (or certain parts thereof) of such legal acts are officially published separately from their textual part (in a different source), or that the graphical parts (or certain parts thereof) are officially published in a way that is different from that of the publication of the textual part. The specified reasons (especially large volume of a legal act, its complex structure, technical problems that arise due to the publication of the graphical part of such a legal act) should be regarded as sufficiently solid and, thus, also as giving the constitutionally justifiable grounds (as the Constitution does not require unreasonable things) for the separate official publication of the textual and graphical parts of a legal act and/or for their official publication in different ways.

It needs to be especially emphasised that, when the graphical part of a legal act is officially published (irrespective of whether it is published in the same source as the textual part or in a different one), it is very important to ensure that it is clear and legible. It is obvious that the minimum printing requirements for the official publication of the textual part of a legal act are often less strict than the corresponding requirements for the official publication of its graphical part (drawings, etc.) (if attempts are made to make this graphical part clear and legible). The quality of the official gazette (publication) in which legal acts are officially published under the general procedure is usually (not only in Lithuania) oriented to the minimum printing requirements for the publication of the textual part of a legal act (thus, to smaller publishing expenses, which, taking account, *inter alia*, of the extent of publishing, is naturally understandable), and not to the far higher requirements set for the publication of its graphical part (drawings, etc.), all the more so because legal acts are mostly comprised of written text only.

It was held in this ruling of the Constitutional Court that the official publication of an entire legal act is not an objective in itself. The mere formal publication of the graphical part of a legal act in the official gazette, where, because of not very high printing quality, it is impossible to read drawings, tables, graphs, schemes, maps, or other parts and, due to this, the possibility for legal subjects to understand (find out) its content in an adequate way is not ensured, may not be considered constitutionally justifiable; such printing would not comply with the constitutional concept of the official publication of legal acts and with the requirements for the clarity and comprehensibility of law, which stem from the constitutional principle of a state under the rule of law.

In this context, it needs to be noted that the notion “published” in Paragraph 2 of Article 7 of the Constitution may not be interpreted as meaning that, purportedly, the official publication of legal acts is only the printing of the text of such legal acts in a traditional “paper” publication (official gazette, etc.) or that, in general, their official publication is necessarily related only to their printing in a certain publication. The legislature may (but, under the Constitution, it is not obliged to) establish that legal acts, including those that have graphical parts, are officially published in a certain printed publication. Where it is constitutionally justifiable, such legal acts (their graphical parts) may be officially published also in other ways.

It should be emphasised at the same time that the necessity to ensure the clarity and comprehensibility of law, thus, also the clarity and comprehensibility of the system of legal acts, implies that the discussed official publication of the graphical part of certain legal acts separately from their textual part (in a different source) and/or in a way that is different from the publication of their textual part should be considered not a rule, but an exception. Such exceptions must *expressis verbis* be provided for in a law. Otherwise, the preconditions would be created for the emergence of disharmony in the legal system; it would be difficult for legal subjects to find out the requirements of law.

It should also be emphasised that, in cases where the graphical part of a legal act is published separately from its textual part (in a different source) and/or in a way that is different from that of the publication of its textual part, the requirements, which stem from the Constitution, for the formality and publicity of the publication of legal acts must be followed, and it is necessary to ensure that, due to the separate publication of the textual and graphical parts of legal acts, no preconditions would emerge for questioning the authenticity of their content.

First of all, it is necessary that, in accordance with the general (regular) procedure of the official publication of legal acts, it would be published in a certain source that a particular legislative decision has been adopted regarding a certain question. Second, it should be clear from the legal acts published in this source that a certain constituent part (constituent parts) of this legal act has (have) not been published therein. Third, it must be clear where the constituent part (constituent parts) of a legal act that was (were) not published in the said source could be accessible. Finally, fourth, the accessibility of the respective part of a legal act (thus, also the entire legal act as a whole) to legal subjects must be ensured in practice; moreover, no reasonable doubts as to the authenticity of the content of the constituent part (constituent parts) of a legal act that was (were) not published in the said source can arise for those legal subjects. If these conditions are followed and, indeed, if the non-publishing of a certain constituent part (constituent

parts) of a legal act in the said source can be constitutionally justifiable, naturally, there will be no grounds for stating that such a legal act is “not published” or that it is “published”, but this has been done neither publicly nor officially, i.e. by failing to meet the requirements of Paragraph 2 of Article 7 of the Constitution and by failing to pay regard to the constitutional principle of a state under the rule of law. Such ensuring (in the specified cases) of the possibilities of access to the content of the constituent part (constituent parts) of a legal act that was (were) not published in the said source, thus, also access to the content of the entire legal act as a whole, if there are enough solid reasons for that, does not in itself give grounds for questioning the compliance of such a legal act with the Constitution.

The provision that, due to certain (sufficiently solid) reasons, the textual and graphical parts of a legal act may be officially published separately and/or in different ways is also *mutatis mutandis* applicable to situations where two or more textual parts of a legal act are officially published separately and/or in different ways.

Under the Constitution, the subjects of legal relationships are under the duty to behave in good faith and without violating law. They have the duty to make effort to find out the requirements of law by themselves. This is required by the general legal principle of *bona fides*, which is inseparable from the constitutional principle of a state under the rule of law.

Thus, if the non-publishing of a certain constituent part (constituent parts) of a legal act in the aforesaid source can be constitutionally justifiable and if the discussed conditions are followed (i.e. it is published in the official (regular) source of the publication of legal acts that a particular legislative decision has been adopted regarding a certain question; it is clear from the legal acts published in this source that a certain constituent part (constituent parts) of a legal act is (are) not published in this source; it is clear where the constituent part (constituent parts) of a legal act that is (are) not published in the said source can be accessible; the accessibility of the respective legal regulation to legal subjects is ensured in a practical way and no reasonable doubts can arise for them regarding the authenticity of the content of the constituent part (constituent parts) of a legal act that was (were) not published in the said source), no legal subject can decide not to follow the requirements of law only because these requirements arise from such part of a legal act where the said part was published separately from other parts.

An especially large volume of a legal act, its complex structure, technical problems that occur due to the publication of its graphical part – these are not the only reasons that can be regarded as solid enough, thus, also as giving the constitutional grounds for the separate official publication of the textual and graphical parts of a legal act and/or their publication in different ways. In general, the legislature may also regulate the official publication of legal acts in a differentiated manner on other grounds and establish alternative (in comparison with the general procedure of the official publication of legal acts) sources, ways, and procedure of the official publication of legal acts.

For instance, such situations are also possible where a certain legal act must come into force immediately, right after it has been issued. In such cases, the immediate official publishing of legal acts as promptly as possible must be ensured.

It is also possible to adopt such legal acts that contain information constituting a state secret or other classified information. The Constitutional Court has held that, under the Constitution, the state has the duty to guarantee the secrecy of information that constitutes a state secret; the disclosure of a state secret may pose a threat to or even inflict damage on the sovereignty of the state, its territorial integrity, or other important state interests or the foundations of the life of society and the state; when the relationships linked with state secrets (or other classified information) and their protection are regulated by means of laws, it must be established what persons and under what procedure and conditions can handle state secrets (or other classified information) (ruling of 15 May 2007). The legislature has the duty to establish such ways and procedure of the official publication of legal acts that contain information constituting a state secret or other classified information where the said ways and procedure would guarantee the protection of the secrecy of such information and, at the same time, would not deny the imperatives of the publication of legal acts, which arise from the Constitution, *inter alia*, would ensure the accessibility of legal acts to the respective legal subjects whose rights and duties are enshrined in those legal acts. On the other hand, the

Constitutional Court has held that the legal normative acts regulating the relationships linked with constitutional human rights and freedoms and with their implementation may not bear any classification markings at all (ruling of 5 April 2000).

Thus, such legal situations are also possible where, on establishing, in a law, the only source and the only way of the official publication of legal acts, such a legal regulation would be not only unreasonable, but also legally deficient and constitutionally unfounded, as it would not allow the law laid down in the respective legal acts to reach its goals, since it would be impossible to implement certain legislative decisions immediately and as promptly as possible, the protection of the secrecy of the respective information would not be guaranteed, and the provisions of a legal act (e.g. its graphical parts) would be understood inadequately due to not very high quality of printing, etc. Accordingly, the constitutional concept of the official publication of legal acts would be deviated from (moreover, the expenses of such publishing could be unreasonably high).

Consequently, the Constitution – Paragraph 2 of Article 7 thereof together with the constitutional principle of a state under the rule of law – not only allows, but also requires, the establishment of not only the general procedure for the official publication of legal acts, but also such a differentiated legal regulation where, due to an especially large volume of a legal act, its complex structure, and technical problems that arise due to the publication of its graphical part, or other sufficiently solid reasons that constitutionally justify the separate publishing of the textual and graphical parts of a legal act and/or their publishing in different ways, certain legal acts (parts thereof) are published in accordance with an alternative procedure (compared with the general procedure) for the official publication of legal acts, i.e. in other sources and/or in other ways. It has been mentioned that the official publication of certain graphical parts of legal acts separately from their textual part (in a different source) and/or in a way that is different from the official publication of their textual part should be considered not a rule, but an exception; such an exception must *expressis verbis* be provided for in a law.

All this is also *mutatis mutandis* applicable to the situations where two or more textual parts of a legal act must be published separately and/or in different ways.

[...]

Under the Constitution, legal acts must be officially published in accordance with the procedure of their official publication; the said procedure must be valid precisely at the moment when such legal acts are passed.

The suspension of the validity of laws

The Constitutional Court's ruling of 5 July 2007

... as the Constitutional Court held in [its decision of 13 November 1997], “the suspension of the validity of laws is not characteristic of lawmaking and, as a rule, is linked with the situations specified in the Constitution”. It should be mentioned that such a situation is provided for in Paragraph 4 of Article 106 of the Constitution, which states that “An application by the President of the Republic to the Constitutional Court, or a resolution of the Seimas, asking for an investigation into the conformity of an act with the Constitution shall suspend the validity of the act”.

The quoted provision of the official constitutional doctrine means, *inter alia*, that the Constitution does not permit the legislature to adopt such laws whereby the validity of effective laws is suspended; that, as long as a law is valid, it is applicable; that, if it is necessary not to apply a law (parts thereof), it must be recognised that it (parts thereof) is (are) no longer valid, but not that the validity of that law (parts thereof) is suspended. On the other hand, the Seimas can establish from when a law, which has been adopted by it and has come into force, must be applied; thus, the date of the entry into force of a law and that of its application may not necessarily coincide (ruling of 24 December 2002).

Competing general and special legal norms (*lex specialis derogat legi generali*)

The Constitutional Court's ruling of 21 January 2008

... The essence of the principle of *lex specialis derogat legi generali* is that, if there are competing general and special norms, special norms should be applied (ruling of 18 October 2000) ...

Legal acts do not have retroactive effect (*lex retro non agit*); the date when a legal act comes into force may not precede the date when this legal act is published (Paragraph 2 of Article 7 and Paragraph 1 of Article 70 of the Constitution)

The Constitutional Court's ruling of 29 June 2012

Under the Constitution, only laws that are published are valid (Paragraph 2 of Article 7); laws adopted by the Seimas come into force after they are signed and officially promulgated by the President of the Republic, unless the laws themselves establish a later date for their entry into force (Paragraph 1 of Article 70).

The Constitutional Court has held on more than one occasion that the constitutional principle of a state under the rule of law implies various requirements for the legislature and other law-making subjects, *inter alia*, the requirement that the effect of legal acts is prospective; the retroactive effect of laws and other legal acts is not allowed (*lex retro non agit*), unless the situation of a subject of legal relationships could be alleviated without prejudice to other subjects of legal relationships (*lex benignior retro agit*) (*inter alia*, the ruling of 25 October 2011); it is not allowed to violate the legitimate interests and legitimate expectations of a person by amendments to a legal regulation, since the persons who have acquired certain rights under a law have the right to reasonably expect that these rights will be retained and implemented for the established time period (*inter alia*, the ruling of 2 September 2009).

It needs to be noted that, in its rulings of 29 November 2007 and 25 October 2011, the Constitutional Court held that it is not permitted to establish such a legal regulation that would interfere in legal relationships that have already ended; such a regulation that could change the particular legal norms when the regulated relationships have already ended would create the preconditions for denying the legitimate expectations of persons, legal certainty and legal security, as well as the constitutional principle of justice.

It should also be noted that the principles of legal certainty, legal security, and legitimate expectations give rise to the prohibition on establishing such a date of the entry into force of a legal act that would precede the date of the publication of that legal act.

The protection of legitimate expectations in cases where a legal regulation is amended (on the principle of the protection of legitimate expectations, see 1.3. An open, just, and harmonious civil society and a state under the rule of law)

The Constitutional Court's ruling of 25 January 2016

Amendments to a legal regulation must be made in such a manner that the persons whose legal status is affected by those amendments would have a real possibility of adapting to a new legal situation. Therefore, in order to create the conditions for persons not only to have access to a new legal regulation prior to the beginning of its validity, but also to adequately prepare for the envisaged changes, it might be necessary to establish a later date of its entry into force. The time period that should be left for adaptation in each concrete situation must be assessed in view of a number of circumstances: the purpose of a law in the legal system and the nature of the social relationships regulated by that law, the circle of subjects to whom it is applied and their possibilities of preparing for the entry into force of the new legal regulation, as well as other important circumstances (rulings of 15 February 2013 and 16 May 2013).

When essential amendments are made to a valid legal regulation, where such amendments lead to unfavourable consequences for the legal position of persons, it may also be necessary to establish a certain transitional legal regulation. The legal situation of persons to whom a new legal regulation is applicable should be regulated by means of transitional provisions in such a manner that those persons would be given enough time to finish the actions that they started on the basis of the previous legal regulation while expecting that the said previous legal regulation would be stable, and that such persons would be given enough time to implement their rights acquired under the previous legal regulation (ruling of 15 February 2013).

The presumption of the constitutionality of legal acts and of the lawfulness of the consequences resulting from the application of legal acts (Paragraph 1 of Article 107 of the Constitution)

The Constitutional Court's ruling of 27 April 2016

When interpreting Paragraph 1 of Article 107 of the Constitution, the Constitutional Court revealed the content of the presumption (stemming from the said paragraph of the Constitution) of the constitutionality of legal acts and of the constitutionality of the consequences resulting from the application of legal acts: the provision of Paragraph 1 of Article 107 of the Constitution, whereby a law (part thereof) may not be applied from the day of the official publication of the decision of the Constitutional Court that the act in question (part thereof) is in conflict with the Constitution, means that, as long as the Constitutional Court has not adopted a decision that a certain legal act (part thereof) is in conflict with the Constitution, it is presumed that such a legal act (part thereof) is in compliance with the Constitution and that the legal consequences that have appeared on the basis of the act in question are lawful (*inter alia*, the rulings of 30 December 2003 and 25 October 2011 and the decision of 19 December 2012).

Consequently, under Paragraph 1 of Article 107 of the Constitution, until the moment when the decision of the Constitutional Court is officially published that a certain legal act (part thereof) is in conflict with the Constitution, it is presumed that the legal act (part thereof) in question is in compliance with the Constitution and that the legal consequences (as, for instance, where, on the basis of a decision adopted by an institution in accordance with the said legal act (part thereof), a person has acquired certain rights or a certain legal status or, on the basis of the said decision adopted by an institution, a person was not granted certain rights or a certain legal status) that have appeared on the basis of the legal act in question are lawful (ruling of 25 October 2011).

The publicity and transparency requirements for law-making procedures

The Constitutional Court's ruling of 8 July 2016

... the constitutional principle of responsible governance, which should be interpreted in conjunction with the imperative obliging state institutions to serve the people, as consolidated in Paragraph 3 of Article 5 of the Constitution, implies the publicity and transparency requirements for law-making procedures; such requirements must be followed, *inter alia*, by institutions implementing state power. Compliance with such requirements in the course of adopting legal acts is an essential condition for the trust of society in the state and law, as well as for the responsibility of state authorities to society; this compliance creates the preconditions for involving the public in the decision-making process related to public interests, *inter alia*, while providing the possibility of access to the drafted legislation and other related information and, thus, implementing, *inter alia*, the rights guaranteed to citizens under Article 33 of the Constitution to participate in the governance of the state, to criticise the work of state institutions or their officials, and to file complaints against their decisions.

... also such constitutionally justifiable cases are possible where a law may provide for a non-public process of adopting legal acts where legal acts are adopted by the Government as, for instance, in order to protect information constituting a state secret or to avoid a threat to the constitutional order, defensive power, or other important interests.

A law requiring the impossible cannot produce legal consequences (*lex non cogit ad impossibilia*)

The Constitutional Court's ruling of 19 June 2018

... under the Constitution, *inter alia*, the constitutional principle of a state under the rule of law, a law requiring the impossible (i.e. which is incompatible with the requirement of *lex non cogit ad impossibilia*, arising from the constitutional principle of a state under the rule of law) cannot produce legal consequences for the subjects of the legal relationships regulated under this law, since they would be obliged to do what could not be done by them at all (i.e. no regard would be paid to the requirement of *impossibilium nulla obligatio est*).

Accordingly, under the Constitution, *inter alia*, the constitutional principle of a state under the rule of law, no legal consequences for the subjects of the legal relationships regulated under a law that is incompatible with the requirement of *lex non cogit ad impossibilia*, arising from the constitutional principle of a state under the rule of law, can be produced by attempts to implement the provisions of the said law by means of statutory acts, *inter alia*, those of the application of law.

1.8.2. The interpretation of law

As regards the doctrine of the interpretation of the Constitution, see 1.8.4. The hierarchy of legal acts, 1.8.4.2. The Constitution, 1.8.4.2.2. The integrity, direct application, and interpretation of the Constitution.

The methods of the interpretation of law

The Constitutional Court's ruling of 23 June 1999

As a rule, in order to disclose the content of legal norms, it is not enough to apply only the linguistic method of interpretation. Various methods of the interpretation of law are known in the legal theory, i.e. linguistic, systematic, historical, comparative, etc. It is possible to disclose the meaning of individual notions used in a law by elucidating the purpose of the law, the nature and scope of the relationships regulated by it, the particularities of the regulation, etc. It is possible to do so by applying various methods (including the systematic one) of the interpretation of laws, as every legal norm is a constituent part of an integral legal act ... and is linked with other norms of that legal act.

The interpretation of law

The Constitutional Court's ruling of 28 March 2006

... the application of the linguistic method of the interpretation of law, as well as the strict following of the letter of the law in general in the course of applying law, is most often justifiable; it is not possible to deny the significance of this method of the interpretation of law; when the linguistic method of the interpretation of law (together with other methods) is applied, the observance of the formal requirements of law and the uniform understanding of the content of a particular legal regulation are ensured.

On the other hand, the linguistic method of the interpretation of law is not the only one or universal, and its significance should not be exaggerated. In this context, it should be noted that, as the Constitutional Court has held in its acts (*inter alia*, in the rulings of 25 May 2004 and 13 December 2004) more than once, the Constitution may not be interpreted only literally, by applying only the linguistic (verbal) method; while interpreting the Constitution, it is necessary to apply various methods of the interpretation of law: systemic, the one of general legal principles, logical, teleological, the one of the intentions of the legislature, the one of precedents, historical, comparative, etc. It should also be held that the same applies to the interpretation of all lower-ranking legal acts (ruling of 16 January 2006).

1.8.3. Legal gaps

As regards the doctrine of the assessment of the constitutionality of legal gaps, see 8. The Constitutional Court, 8.3. The powers of the Constitutional Court, 8.3.4. The limits of the jurisdiction of the Constitutional Court, 8.3.4.1. The powers of the Constitutional Court to investigate the constitutionality of legal gaps.

A legal gap (*lacuna legis*), *inter alia*, a legislative omission

The Constitutional Court's decision of 8 August 2006

The absence of explicit legal provisions regulating certain social relationships in a legal act (part thereof), if a certain legal regulation is neither explicitly nor implicitly established in other legal acts (or in other parts of the same legal act), should be treated as a legal gap – a *lacuna legis*. ... Such legal gaps may occur due to various reasons, *inter alia*, due to mistakes in the course of lawmaking, also due to the fact

that a particular law-making subject did not regulate those social relationships deliberately. Such gaps, both serious and minor, may also occur after, by its ruling, the Constitutional Court declares a legal regulation (part thereof) implicitly or explicitly established in a certain legal act (articles (parts thereof) of legal acts) to be in conflict with a higher-ranking legal act, *inter alia* (and, first of all), with the Constitution; however, it needs to be emphasised that this does not mean that legal gaps occur after the entry into force of each ruling of the Constitutional Court whereby a certain lower-ranking legal act (part thereof) is ruled to be in conflict with a higher-ranking legal act, *inter alia* (and, first of all), with the Constitution: such legal situations are also possible where the removal of provisions conflicting with the provisions of higher-ranking legal acts, *inter alia*, with the Constitution, from the legal system by means of a ruling of the Constitutional Court, with respect to the application of law, virtually amounts to changing the overall legal regulation, i.e. the establishment of a different overall legal regulation that contains no gaps.

At the same time, it needs to be noted that any legal gap, no matter in what way it occurred, means that, although certain social relationships must be legally regulated (there is a need for their legal regulation), they are not legally regulated. All such gaps should be regarded as indeterminacies or shortcomings in a legal regulation, or as deficiencies of the legal system, which should be removed. In cases where the entire area of social relationships is not regulated, there are even grounds for stating the existence of the so-called vacuum in a particular legal regulation.

A legal gap, *inter alia*, a legislative omission, as one of the varieties of the non-establishment of an explicit legal regulation, is essentially different from such non-establishment of an explicit legal regulation that means that, in a certain legal act (part thereof), there is an implicitly established legal regulation that supplements and extends an explicit legal regulation (*inter alia*, a legal regulation that consolidates conduct opposite to the one established explicitly) and ... may potentially be in conflict with a certain higher-ranking legal act, *inter alia*, with the Constitution. In cases where a certain legal regulation implicitly established in a legal act (part thereof) lays down certain conduct and thereby supplements and extends an explicit legal regulation, there are no grounds for asserting that, purportedly, that legal act (part thereof) does not regulate certain social relationships at all, since those social relationships are, in fact, legally regulated; however, the said legal regulation is consolidated in particular legal acts not explicitly, *expressis verbis*, but implicitly, and is derived from explicit legal provisions in the course of the interpretation of law. Meanwhile, a legal gap, *inter alia*, a legislative omission, always means that the legal regulation of certain social relationships is, in general, established neither explicitly nor implicitly, neither in the particular legal act (part thereof) nor in any other legal acts, even though there exists a need for the legal regulation of those social relationships; in the event of a legislative omission, the said legal regulation must, while paying regard to the imperatives, stemming from the Constitution, of the consistency and inner non-contradiction of the legal system and taking into account the content of those social relationships, be established precisely in the particular legal act (part thereof), since this is required by a certain higher-ranking legal act, *inter alia*, the Constitution itself.

Some legal gaps ... may be regarded as such indeterminacies in a legal regulation that do not compete with the legal regulation established in higher-ranking legal acts and, as such, do not create the preconditions for violating the said acts. ...

In other cases, if a certain legal regulation is neither explicitly nor implicitly established also in other legal acts (or in other parts of the same legal act) and if the non-establishment of the explicit legal regulation in the reviewed legal act (part thereof) cannot be regarded as the above-mentioned implicit legal regulation that supplements and extends an explicitly established legal regulation, the absence of explicit legal provisions regulating the respective social relationships in a reviewed lower-ranking legal act (part thereof) should be treated as such a legal gap that is prohibited by the Constitution (or by a certain other higher-ranking legal act), i.e. as a legislative omission. A legislative omission means that a certain legal regulation is not established in the particular legal act (part thereof), although, under the Constitution (or under some other higher-ranking legal act against which the compliance of the lower-ranking legal act (part thereof) is assessed by the Constitutional Court), it must be established precisely in that particular legal act (part thereof). It needs to be especially emphasised that a legislative omission differs from other legal gaps also

from the aspect that it is always the consequence of an action made by the law-making subject that issued a particular legal act, but not that of its failure to act; moreover, it is not the consequence of an action (especially, a lawful one) or failure to act by any other subject; for instance, such a legal gap where certain social relationships are not even begun to be regulated by certain legal acts, although there exists a need for their legal regulation, should not be regarded as a legislative omission; in the same way, a legislative omission cannot occur after the Constitutional Court, by its ruling, finds in a constitutional justice case that a certain legal act (part thereof) is in conflict with a higher-ranking legal act, *inter alia*, with the Constitution.

Thus, it is necessary to distinguish a legislative omission as the consequence of an action by the law-making subject that passed a particular legal act from legal gaps that occurred due to the fact that the necessary law-making actions were not undertaken at all, where no law-making subject passed a legal act designated for regulating certain social relationships and, due to this, those social relationships remained legally unregulated. Under certain circumstances, especially when the Constitution demands that those social relationships be legally regulated (and sometimes it explicitly indicates that they must be regulated not by means of a legal act of any type, but by means of a constitutional law or a law), the absence of law-making actions actually may create the preconditions for the occurrence of an anti-constitutional situation – such a state of social relationships where these relationships are developing not on the basis of law, although, as mentioned before, the Constitution demands that they be legally regulated. However, such a legal regulation or, to be more precise, its absence, is not a legislative omission.

Removing legal gaps and filling them ad hoc (for more on the powers of courts to fill legal gaps ad hoc, see 9.1. Courts, 9.1.5. The powers of courts related to the administration of justice)

The Constitutional Court's decision of 8 August 2006

The removal of legal gaps (without excluding a legislative omission) is a matter of the competence of the respective (competent) law-making subject. However, it is also possible, to a certain extent, to fill legal gaps that are in lower-ranking legal acts in the course of the application of law (*inter alia*, by making use of legal analogy, by applying general legal principles, as well as higher-ranking legal acts, first of all, the Constitution), thus, also in the course of the interpretation of law (*inter alia*, when this is done by the courts of general jurisdiction and specialised courts (established under Paragraph 2 of Article 111 of the Constitution), which administer justice and decide, within their competence, individual cases and have to interpret law so that they would be able to apply it). At the same time, it needs to be emphasised that a court can fill a legal gap that is in a lower-ranking legal act only ad hoc, i.e. by this way of the application of law, a legal gap is removed only as regards the individual social relationship due to which a concrete dispute is decided in the respective case investigated by that court. On the other hand, the judicial (ad hoc) removal of legal gaps creates the preconditions for forming the same case law in deciding cases of a certain category – the law entrenched in judicial precedents; undoubtedly, the law entrenched in judicial precedents can be substantially changed or modified otherwise later by the legislature (or another competent law-making subject) after it regulates certain social relationships by means of a law (or another legal act) and, thus, removes a particular legal gap already not ad hoc, but by a prospectively directed legal regulation of a general character.

Thus, it is possible to completely remove legal gaps (as well as legislative omissions) only when the law-making institutions issue the respective legal acts. Courts cannot do this. They can fill legal gaps that are in lower-ranking legal acts only ad hoc, since courts administer justice, but they are not legislative institutions (in the positive and broadest sense of this term); such restrictiveness of the possibilities of courts in this area is especially evident when gaps in substantive law are confronted. However, in all cases, there is an undeniable possibility for courts to fill ad hoc a legal gap that is in a lower-ranking legal act. If such powers of courts were denied or not recognised, if the possibilities of courts to apply law, first of all, supreme law – the Constitution, depended on whether a certain law-making subject did not leave gaps in a legal regulation (laid down by it in legal acts), and if courts were able to decide cases only after these legal gaps are filled by way of lawmaking, then it would have to be stated that courts, when they decide cases,

apply not law and, first of all, not supreme law – the Constitution, but only a law (in the general sense of this term), that they do not administer justice according to law, but only formally apply articles (parts thereof) of legal acts, that constitutional values, *inter alia*, the rights and freedoms of a person, may be injured (and may be neither compensated nor redressed) solely because a particular law-making subject has failed to legally regulate certain relationships (or has legally regulated them, but not intensively enough), i.e. that, although certain values are entrenched in the Constitution, they, under the Constitution, are not properly defended and protected. This would not be in line with the social and constitutional mission of courts. Besides, this would mean that law is treated only as its textual form and is identified with its textual form.

Removing legal gaps and filling them ad hoc

The Constitutional Court's ruling of 7 June 2007

... the said possibility for courts to fill legal gaps ad hoc does not mean that the legislature does not have the duty, paying regard to the Constitution and within a reasonable time period, to establish the proper legal regulation of particular relationships by means of a law.

A legal gap, *inter alia*, a legislative omission

The Constitutional Court's ruling of 11 December 2009

The Constitutional Court has held more than once that a legal gap, *inter alia*, a legislative omission, always means that the legal regulation of certain social relationships is established neither explicitly nor implicitly, neither in a certain legal act (part thereof) nor in any other legal acts, even though there exists a need for the legal regulation of those social relationships; as regards a legislative omission, such a legal regulation must, while paying regard to the imperatives, stemming from the Constitution, of the consistency and inner non-contradiction of the legal system and taking into account the content of those social relationships, be established precisely in the particular legal act (part thereof), since this is required by a certain higher-ranking legal act, *inter alia*, the Constitution itself (decisions of 8 August 2006 and 5 November 2008 and the rulings of 2 March 2009 and 22 June 2009).

Removing legal gaps and filling them ad hoc

The Constitutional Court's ruling of 25 November 2019

... as held by the Constitutional Court, the removal of legal gaps is a matter within the competence of the respective (competent) law-making entity; it is also possible to fill legal gaps to a certain extent in the course of applying law and, thus, also in the course of interpreting law, *inter alia*, by courts, which administer justice and decide individual cases within their competence and are obliged to interpret law in order they could apply it; courts can fill legal gaps on an ad hoc basis, i.e. they can remove them with regard to an individual social relationship due to which a dispute is decided in the proceedings before the court; it is possible to completely remove legal gaps only when the law-making institutions adopt the respective legal acts; the possibility of filling legal gaps on an ad hoc basis does not mean that the legislature does not have the duty, paying regard to the Constitution and within a reasonable time period, to establish the proper legal regulation of particular relationships by means of a law (*inter alia*, the decision of 8 August 2006 and the ruling of 7 June 2007). The constitutional duty to establish the proper legal regulation of particular relationships by means of legal acts in accordance with the Constitution and within a reasonable time period also applies *mutatis mutandis* to other law-making entities.

Removing legal gaps and filling them ad hoc

The Constitutional Court's ruling of 8 July 2020

... the possibility for courts to fill legal gaps on an ad hoc basis does not mean that the legislature does not have the duty, paying regard to the Constitution and within a reasonable time period, to establish the proper legal regulation of particular relationships by means of a law (ruling of 7 June 2007). It should be

noted that such a duty is also binding on other law-making entities in cases where a legal gap, *inter alia*, a legislative omission, is in a legal act ranking lower than a law.

1.8.4. The hierarchy of legal acts

1.8.4.1. General provisions

The requirement stemming from the principle of a state under the rule of law for law-making subjects to respect the hierarchy of legal acts

The Constitutional Court's ruling of 13 December 2004

The constitutional principle of a state under the rule of law and other constitutional imperatives give rise to the requirement for the legislature and other law-making subjects to pay regard to the hierarchy of legal acts, which stems from the Constitution. This requirement, *inter alia*, means that lower-ranking legal acts are prohibited from regulating such social relationships that may be regulated only by means of higher-ranking legal acts, also that lower-ranking legal acts are prohibited from laying down such a legal regulation that could compete with a legal regulation established in higher-ranking legal acts. ... through a statutory legal act, the norms of a law are realised; therefore, a statutory legal act may not replace a law itself or create any new legal norms of a general character that would compete with the norms of a law, because the supremacy of laws over statutory legal acts, which is consolidated in the Constitution, would thus be violated (ruling of 21 August 2002); it should also be stressed that statutory legal acts may not be in conflict with laws, constitutional laws, and the Constitution; statutory legal acts must be adopted on the basis of laws, because a statutory legal act is an act of the application of the norms of a law, irrespective of whether such a statutory legal act has one-off (*ad hoc*) application or permanent validity (ruling of 30 December 2003).

There is no delegated legislation in Lithuania (rulings of 26 October 1995, 19 December 1996, 3 June 1999, and 5 March 2004); therefore, the Seimas – the legislature – cannot assign the Government or other institutions to regulate, by means of statutory legal acts, the legal relationships that, under the Constitution, must be regulated by means of laws; while the Government may not accept such powers. The said relationships may not be regulated by means of statutory acts of the Seimas, either.

... under the Constitution, a legal regulation related to defining the content of human rights and freedoms or consolidating the guarantees of their implementation may be established only by means of a law. On the other hand, in cases where the Constitution does not require that particular relationships linked with human rights and with their implementation be regulated by means of a law, such relationships may also be regulated by means of statutory acts – acts that regulate the process (procedural) relationships of implementing human rights, the procedure for implementing individual human rights, etc.; however, under no circumstances may statutory acts establish such a legal regulation of the relationships linked with human rights and with their implementation that would compete with the one established in a law.

It should also be stressed that such failure to adhere to the form of a legal act where the Constitution requires that certain relationships must be regulated by means of a law, but they are still regulated by means of a statutory act (irrespective of whether such relationships are, from any aspect, additionally regulated in a law the legal regulation established in which is challenged by the legal regulation laid down in a statutory act, or irrespective of the fact that no law regulates such relationships at all), may provide the sufficient grounds for declaring such a statutory legal act unconstitutional. Under the Constitution, it is the Constitutional Court that decides whether statutory legal acts of the Seimas, the President of the Republic, or the Government, according to their form, are in conflict with the Constitution. When making such a decision, in every case, the Constitutional Court assesses all circumstances of the case, *inter alia*, the place of the reviewed legal regulation in the entire legal system, its objective, as well as the intentions of the law-making subject, the development of the legal regulation of the respective relationships and its changes before the legal act at issue was passed (legislative history), etc.

It should also be stressed that, in cases where substatutory legal acts are ruled to be in conflict with the Constitution according to their form (due to the fact that they regulated such relationships that can be regulated only by means of a law) and may no longer be applied, it is necessary to pay regard to the requirement, arising from the Constitution, to assess whether other values protected by the Constitution will be violated, or whether the balance among the values consolidated, protected, and defended by the Constitution will be disturbed, in the event of failure to protect and defend those rights of persons that were acquired during the period of the validity of the said substatutory legal acts. In these special cases, the legislature is under the constitutional obligation, having assessed all circumstances and having found that this is necessary, to establish such a legal regulation that would provide for the possibility of protecting and defending, fully or partially, the acquired rights of persons who obeyed law, followed the requirements of laws, and had trust in the state and its law in cases where those rights arose from the legal acts that were later ruled to be in conflict with the Constitution according to their form (due to the fact that they regulated such relationships that can only be regulated by means of a law); the said legal regulation established by the legislature must ensure that the principle of justice, enshrined in the Constitution, would not be derogated from.

The hierarchy of legal acts

The Constitutional Court's decision of 20 September 2005

The Constitutional Court has held on more than one occasion that the principle of a state under the rule of law, which is consolidated in the Constitution, implies the hierarchy of legal acts, in which the Constitution takes an exceptional place; in a state under the rule of law, it is prohibited to establish such a legal regulation that might compete with a legal regulation established in higher-ranking legal acts, *inter alia*, with that established in the Constitution itself.

Thus, under the Constitution, such legal situations are impermissible where it would not be possible to verify in a court whether legal acts (parts thereof) whose review in terms of their compliance with the Constitution does not fall within the jurisdiction of the Constitutional Court, *inter alia*, legal acts issued by ministers, other lower-ranking legal acts, as well as legal acts issued by municipalities, are in conflict with the Constitution and laws.

The time of the entry into force or the loss of the validity of higher-ranking legal acts may not depend on the time of the adoption, the entry into force, or the loss of the validity of lower-ranking legal acts

The Constitutional Court's decision of 29 December 2006

... as the Constitutional Court held in its ruling of 29 October 2003, under the Constitution, the Government may not establish, by its resolutions, any such a legal regulation whereby the time of the entry into force or the loss of the validity of a government resolution would depend on the entry into force of a lower-ranking legal act that is passed by another subject. This doctrinal provision formulated in the Constitutional Court's ruling of 29 October 2003 should be interpreted as expressing the general constitutional imperative that the time of the entry into force or the loss of the validity of a higher-ranking legal act must not and may not be made dependent on the adoption, the entry into force, or the loss of the validity of a lower-ranking legal act, etc. Thus, the time of the entry into force of a law must not and may not be made dependent on the issuance and entry into force of a decree of the President of the Republic, which is a lower-ranking legal act.

The hierarchy of legal acts

The Constitutional Court's ruling of 9 May 2014

The principle of a state under the rule of law, which is consolidated in the Constitution, implies the hierarchy of legal acts. In its acts, the Constitutional Court has held on more than one occasion that this constitutional principle does not permit that substatutory legal acts (thus, also government resolutions)

establish any such a legal regulation that would compete with that established by means of a law, that substatory legal acts may not be in conflict with laws, constitutional laws, and the Constitution, that substatory legal acts must be adopted on the basis of laws, and that a substatory legal act is an act of the application of the norms of a law, irrespective of whether that act has one-off (ad hoc) application or permanent validity (*inter alia*, the rulings of 6 September 2007, 9 March 2010, 18 April 2012, 20 February 2013, and 9 May 2013). The Constitution prohibits lower-ranking legal acts from regulating the relationships that may be regulated only by means of higher-ranking legal acts (*inter alia*, the rulings of 29 November 2007, 2 September 2009, and 18 April 2012). The Constitutional Court has held on more than one occasion that laws establish rules of general nature, while substatory legal acts may particularise them and regulate the procedure for their implementation (rulings of 26 October 1995, 19 December 1996, and 5 March 2004). In the constitutional jurisprudence, it has been noted that the duty of the Government to adopt substatory acts that are necessary for the implementation of laws stems directly from the Constitution and, in cases where there is the assignment by the legislature to do so, it also stems from laws and the resolutions of the Seimas concerning the implementation of laws. Among other things, the Constitutional Court, when interpreting the constitutional principle of a state under the rule of law, also held that, in cases where the Constitution does not require the regulation of certain relationships that are indicated therein specifically by means of a law and where, under the Constitution, the regulation of such relationships is not assigned to the exclusive competence of other institutions exercising state power, *inter alia*, the Government, the legislature may also establish in a law that certain relationships are regulated by the Government or an institution authorised by it (ruling of 5 May 2007).

1.8.4.2. The Constitution

The Constitution as the highest-ranking legal act and a social contract

The Constitutional Court's ruling of 25 May 2004

The Constitution of the Republic of Lithuania was adopted by referendum – the vote of the entire Nation – on 25 October 1992. The referendum in which the Constitution was adopted was organised according to the democratic legal tradition of the State of Lithuania (ruling of 22 July 1994). The source of the Constitution is the national community, the civil Nation, itself.

The Constitution is the highest-ranking legal act. The Constitution reflects a social contract – the obligation democratically assumed by all citizens of the Republic of Lithuania to the current and future generations to live under the fundamental rules consolidated in the Constitution and to obey those rules in order to ensure the legitimacy of state power and the lawfulness of its decisions, as well as human rights and freedoms, so that concord would exist in society. As the highest-ranking legal act and a social contract, the Constitution is based on universal and unquestionable values, such as the sovereignty belonging to the Nation, democracy, the recognition of human rights and freedoms and respect for them, respect for law and the rule of law, the limitation of the scope of powers, the duty of state institutions to serve the people and their responsibility to society, civic consciousness, justice, and the striving for an open, just, and harmonious civil society and a state under the rule of law. The Constitution provides for the grounds of legal relationships between a person and the state, the formation and functioning of public power, the national economy, local self-government, as well as other major relationships in the life of society and the state. Having adopted the Constitution, the civil Nation, as the national community, formed the normative basis for its own common life and consolidated the state as the common good of all society. The Nation amends the Constitution directly or through its democratically elected representatives and only according to the rules established in the Constitution itself. The Constitution is supreme law. The Constitution provides for the guidelines for the entire legal system – the entire legal system is created on the basis of the Constitution.

The Constitution as the normative basis of the life of the national community

The Constitutional Court's ruling of 24 January 2014

Having adopted the Constitution, the highest-ranking legal act, by referendum, the Lithuanian nation formed the normative basis for its own common life, as the national community – the civil Nation, and consolidated the state as the common good of all society (*inter alia*, the rulings of 25 May 2004, 19 August 2006, and 24 September 2009). One of the most important obligations of a democratic state based on law and justice is to respect, defend, and protect the values, as well as human rights and freedoms, upon which the Constitution itself adopted by the Nation is based and whose actual consolidation, defence, and protection is the *raison d'être* of the state itself; otherwise, it would not be possible to regard the state as the common good of all society (rulings of 19 August 2006 and 24 September 2009 and the decision of 19 December 2012).

The Constitution as the highest-ranking legal act and a social contract; the Constitution is binding on the national community – the civil Nation itself

The Constitutional Court's ruling of 11 July 2014

... the Constitution is supreme law. The source of the Constitution is the national community – the civil Nation (ruling of 25 May 2004).

The Constitution reflects a social contract – the obligation democratically assumed by all citizens of the Republic of Lithuania to the current and future generations to live under the fundamental rules consolidated in the Constitution and to obey those rules in order to ensure the legitimacy of state power and the lawfulness of its decisions, as well as human rights and freedoms, so that concord would exist in society (ruling of 25 May 2004 and the decision of 20 April 2010). As the highest-ranking legal act and a social contract, the Constitution is based on universal and unquestionable values, such as the sovereignty belonging to the Nation, democracy, the recognition of human rights and freedoms and respect for them, respect for law and the rule of law, the limitation of the scope of powers, the duty of state institutions to serve the people and their responsibility to society, civic consciousness, justice, and the striving for an open, just, and harmonious civil society and a state under the rule of law (rulings of 25 May 2004, 19 August 2006, and 24 September 2009, the decision of 19 December 2012, and the ruling of 24 January 2014).

In view of the foregoing, it should be emphasised that the Constitution reflects the obligation of the national community – the civil Nation – to create and reinforce the state by following the fundamental rules consolidated in the Constitution; the Constitution lays down the legal foundation for the common life of the Nation – the national community. Thus, it should also be emphasised that the Constitution equally binds the national community – the civil Nation itself; therefore, the supreme sovereign power of the Nation may be executed, *inter alia*, directly (by referendum) only in observance of the Constitution.

The concept, nature, and purpose of the Constitution

The Constitutional Court's ruling of 30 July 2020

... the Constitution is supreme law; the source of the Constitution is the national community itself – the civil People. The Constitution reflects a social contract – the obligation democratically assumed by all citizens of the Republic of Lithuania to the current and future generations to live under the fundamental rules consolidated in the Constitution and to obey those rules in order to ensure the legitimacy of state power and the lawfulness of its decisions, as well as human rights and freedoms, so that concord would exist in society (*inter alia*, the ruling of 25 May 2004, the decision of 20 April 2010, and the ruling of 11 July 2014). As the highest-ranking legal act and a social contract, the Constitution is based on universal and unquestionable values – the sovereignty belonging to the People, democracy, the recognition of human rights and freedoms and respect for them, respect for law and the rule of law, the limitation of the scope of powers, the duty of state authority institutions to serve the people and the responsibility of these institutions to society, civic consciousness, justice, and the striving for an open, just, and harmonious civil society and

a state under the rule of law (*inter alia*, the rulings of 25 May 2004, 24 September 2009, and 11 July 2014). Having adopted the Constitution, the civil People, as the national community, laid down the normative basis for the common life and consolidated the state as the common good of all society (*inter alia*, the rulings of 25 May 2004, 24 September 2009, and 24 January 2014). The Constitution equally binds the national community itself – the civil People; therefore, the supreme sovereign power of the People may be executed, *inter alia*, directly (by referendum), only in observance of the Constitution (ruling of 11 July 2014).

Thus, the Constitution, whose source, like in the case of the fundamental constitutional acts of the State of Lithuania, is the national community itself – the civil People, is the highest-ranking constituent act, which forms the normative basis for the common life of the civil People, while giving meaning to and consolidating the state as the common good of all society. The basis of the Constitution as supreme law is comprised of those provisions of the fundamental constitutional acts of the State of Lithuania that consolidated and implemented the unamendable fundamental constitutional principles – independence, democracy, and the innate nature of human rights and freedoms; the Constitution as supreme law is also based on other fundamental provisions laid down in the fundamental constitutional acts of the State of Lithuania and on the constitutional traditions of the State of Lithuania expressed in those provisions. In view of this, like the fundamental constitutional acts of the State of Lithuania, the Constitution adopted by referendum is the primary source of Lithuanian constitutional law. ...

1.8.4.2.1. The supremacy of the Constitution

The principle of the supremacy of the Constitution (Paragraph 1 of Article 7 of the Constitution)

The Constitutional Court's ruling of 17 October 1995

The legal system of the Republic of Lithuania is based on the requirement that any law or other legal act, as well as any international treaty of the Republic of Lithuania, may not be in conflict with the Constitution, since Paragraph 1 of Article 7 of the Constitution prescribes: “Any law or other act that contradicts the Constitution shall be invalid.” As such, this constitutional provision cannot render any law or international treaty invalid, but it requires that the provisions of laws and international treaties be not in conflict with the provisions of the Constitution.

The principle of the supremacy of the Constitution

The Constitutional Court's ruling of 24 December 2002

The principle of the supremacy of the Constitution is a fundamental requirement for a democratic state under the rule of law.

The principle of the supremacy of the Constitution is consolidated in Paragraph 1 of Article 7 of the Constitution, which provides that any law or other act that contradicts the Constitution is invalid; the same principle is also consolidated from various aspects in Paragraph 2 of Article 5 of the Constitution, which provides that the scope of powers is limited by the Constitution, in Paragraph 1 of Article 6 thereof, which provides that the Constitution is an integral and directly applicable act, in Paragraph 2 of Article 6 thereof, which provides that everyone may defend his/her rights by invoking the Constitution, in Paragraph 1 of Article 30 thereof, which provides that a person whose constitutional rights or freedoms are violated has the right to apply to a court, in Paragraph 1 of Article 102 thereof, which provides that the Constitutional Court decides whether the laws and other acts of the Seimas are in conflict with the Constitution and whether the acts of the President of the Republic and the Government are in conflict with the Constitution or laws, in Paragraph 1 of Article 110 thereof, which provides that judges may not apply any laws that are in conflict with the Constitution, etc.

The principle of the supremacy of the Constitution means that the Constitution takes an exceptional, the highest, place in the hierarchy of legal acts, that no legal act may be in conflict with the Constitution, that no one is permitted to violate the Constitution, that the constitutional order must be protected, and that

the Constitution itself consolidates the mechanism making it possible to determine whether legal acts (parts thereof) are in conflict with the Constitution. In this respect, the principle of the supremacy of the Constitution, which is established in the Constitution, is inseparably linked with the constitutional principle of a state under the rule of law, which is a universal constitutional principle upon which the entire Lithuanian legal system and the Constitution itself are based. The violation of the principle of the supremacy of the Constitution would mean that the constitutional principle of a state under the rule of law is also violated.

The duty of law-making subjects to revise the legal acts that were passed before the entry into force of the Constitution (Paragraph 1 of Article 7 of the Constitution and Article 2 of the Law on the Procedure for the Entry into Force of the Constitution of the Republic of Lithuania)

The Constitutional Court's ruling of 29 October 2003

... the principle of the supremacy of the Constitution implies the duty of the legislature and other law-making subjects to revise, while taking account of the norms and principles of the Constitution, the legal acts that were passed before the entry into force of the Constitution and to ensure a harmonious hierarchical system of the legal acts that regulate the same relationships.

[...]

It should be noted that the phrase “inasmuch as they are not in conflict with the Constitution and this Law” of Article 2 [which provides that laws, as well as other legal acts or parts thereof, that were in force in the territory of the Republic of Lithuania prior to the adoption of the Constitution of the Republic of Lithuania are effective inasmuch as they are not in conflict with the Constitution and this law, and remain in force until they are either declared null and void or brought in line with the provisions of the Constitution] of the Law on the Procedure for the Entry into Force of the Constitution of the Republic of Lithuania, to the extent that the said phrase is related to the principle of the supremacy of the Constitution and, in particular, to the provision of Paragraph 1 of Article 7 of the Constitution, whereby any law or other act that contradicts the Constitution is invalid, means that the Constitution stipulates that the legal acts that were adopted before the entry into force of the Constitution may not be valid if they are inconsistent with the Constitution and if it is established, on the basis and according to the procedure established in the Constitution, that those legal acts are in conflict with the Constitution.

Under the Constitution, the phrase “shall remain in force until they are either declared null and void or brought in line with the provisions of the Constitution” of Article 2 of the Law on the Procedure for the Entry into Force of the Constitution of the Republic of Lithuania means that the legislature and other law-making subjects have the duty to revise all legal acts that were passed by them prior to the entry into force of the Constitution and are still in force, including such legal acts that were passed by no longer existing institutions of the State of Lithuania after the entry into force of the Constitution and still remain in force and regulate the relationships that belong to the sphere of regulation by the respective law-making subject, as well as such legal acts that were adopted before the restoration of the independent State of Lithuania but remained in force after the restoration of the independent State of Lithuania and, after the entry into force of the Constitution, regulate the relationships that belong to the sphere of regulation by the respective law-making subject, and the duty to assess whether those legal acts, in the opinion of that law-making subject, are in conflict with the Constitution.

The legislature or another law-making subject, having assessed that, in its opinion, a legal act that was passed by it before the entry into force of the Constitution and is still in force, or a legal act that was passed by no longer existing institutions of the State of Lithuania and is still in force and, after the entry into force of the Constitution, regulates the relationships that belong to the sphere of regulation by the respective law-making subject, or a legal act that was passed before the restoration of the independent State of Lithuania but remained in force after the restoration of the independent State of Lithuania and, after the entry into force of the Constitution, regulates the relationships that belong to the sphere of regulation by the respective law-making subject, is in conformity with the Constitution, may leave such a legal act in force. On the other hand, if the legislature or another law-making subject has assessed that, in its opinion, a legal act (or

part thereof) that was adopted by it before the entry into force of the Constitution and is still in force, or a legal act (or part thereof) that was passed by no longer existing institutions of the State of Lithuania and is still in force and, after the entry into force of the Constitution, regulates the relationships that belong to the sphere of regulation by the respective law-making subject, or a legal act (or part thereof) that was passed before the restoration of the independent State of Lithuania but remained in force after the restoration of the independent State of Lithuania and, after the entry into force of the Constitution, regulates the relationships that belong to the sphere of regulation by the respective law-making subject, is not in conformity with the Constitution, the legislature or another law-making subject has the constitutional duty to bring this act in line with the Constitution, i.e. to pass a new legal act that would amend the legal act (or part thereof) that, in the opinion of that law-making subject, is not in conformity with the Constitution, or to declare such a legal act that, in its opinion, is not in conformity with the Constitution, no longer valid.

The constitutionality of those legal acts (or parts thereof) that were not brought in line with the Constitution by the respective law-making subject (by passing a new legal act amending, in the opinion of that law-making subject, a legal act (or part thereof) that was not in conformity with the Constitution) and that were not declared to be no longer valid may be verified through constitutional review. Under the Constitution, the Constitutional Court decides regarding the constitutionality of the Republic of Lithuania's laws, other acts of the Supreme Council, and government acts that were adopted prior to the entry into force of the Constitution, as well as regarding the constitutionality of legal acts of the respective legal force that were passed before the restoration of the independent State of Lithuania but remained in force after the restoration of the independent State of Lithuania and regulate the relationships that belong to sphere of regulation by the Seimas or the Government. In its ruling of 30 May 2003, the Constitutional Court held that, according to the Constitution, only the Constitutional Court has the powers to officially interpret the Constitution.

... the duty of the legislature and other law-making subjects to revise all legal acts that were adopted by them before the entry into force of the Constitution and are still in force, also the legal acts that were passed by no longer existing institutions of the State of Lithuania and still remain in force and, after the entry into force of the Constitution, regulate the relationships that belong to the sphere of regulation by the respective law-making subject, as well as the legal acts that were passed before the restoration of the independent State of Lithuania but remained in force after the restoration of the independent State of Lithuania and, after the entry into force of the Constitution, regulate the relationships that belong to the sphere of regulation by the respective law-making subject, as well as the duty to assess whether those legal acts, in the opinion of that law-making subject, are in conflict with the Constitution, also implies their duty to ensure that those legal acts are brought in line with the provisions of the Constitution not only in terms of the content and scope of the legal regulation established in such legal acts, including the form of such legal acts, but also in terms of the publication of those legal acts as required by Paragraph 2 of Article 7 of the Constitution.

It should be noted that the process of the revision and assessment of the constitutionality of the legal acts that were adopted before the entry into force of the Constitution is not a one-off act; however, this process may not last for a groundlessly long time period. The principle of the supremacy of the Constitution and the constitutional principle of a state under the rule of law give rise to the duty of the legislature and other law-making subjects to revise all legal acts that were passed by them before the entry into force of the Constitution and are still in force, also the legal acts that were passed by no longer existing institutions of the State of Lithuania and are still in force and, after the entry into force of the Constitution, regulate the relationships that belong to the sphere of regulation by the respective law-making subject, as well as the legal acts that were passed before the restoration of the independent State of Lithuania but remained in force after the restoration of the independent State of Lithuania and, after the entry into force of the Constitution, regulate the relationships that belong to the sphere of regulation by the respective law-making subject, as well as the duty to assess the conformity of the said legal acts with the Constitution within a reasonably short time period. This also applies to the revision and assessment of the above-mentioned legal acts with respect to the manner of their publication.

It is not allowed to interpret the Constitution on the basis of lower-ranking legal acts

The Constitutional Court's ruling of 1 July 2004

The norms and principles of the Constitution may not be interpreted on the basis of acts adopted by the legislature and other law-making subjects, as the supremacy of the Constitution in the legal system would, thus, be denied (ruling of 12 July 2001).

The principle of the supremacy of the Constitution

The Constitutional Court's decision of 19 November 2012

The principle of the supremacy of the Constitution is consolidated not only in Paragraph 1 of Article 7 of the Constitution, but it is also entrenched from various aspects in other articles of the Constitution (rulings of 24 December 2002, 29 October 2003, 5 March 2004, 20 March 2007, 29 March 2012, and 5 September 2012). Various aspects of this principle should be revealed while taking account of ... Articles 1, 5, 6, 18, 30 and Paragraph 1 of Article 102 of the Constitution, in the context of which the content of Paragraph 1 of Article 107 of the Constitution should be interpreted. Thus, for instance, the principle of the supremacy of the Constitution and the constitutional imperative of the rule of law are implied, *inter alia*, by the provision of Article 1 of the Constitution that the State of Lithuania is democratic, by the principle of the separation of powers, which is consolidated in Paragraph 1 of Article 5, by the provision of Paragraph 2 of Article 5, whereby the scope of powers is limited by the Constitution, as well as by the principle related to this provision, which is consolidated in Article 18, according to which human rights and freedoms are innate; *inter alia*, the provision of Paragraph 1 of Article 6 of the Constitution, according to which the Constitution is a directly applicable act (i.e. the principle of the direct application of the Constitution), the provision of Paragraph 2 of this article, whereby everyone may defend his/her rights by invoking the Constitution, as well as the related provision of Paragraph 1 of Article 30, whereby a person whose constitutional rights or freedoms are violated has the right to apply to a court, are designated for ensuring the supremacy of the Constitution.

The principle of the supremacy of the Constitution; the constitutional imperative prescribing that it is not permitted to put to a referendum any such possible decisions that are non-compliant with the requirements of the Constitution

The Constitutional Court's ruling of 11 July 2014

In the Constitutional Court's ruling of 19 August 2006, it is noted that one of the most important obligations of a democratic state based on law and justice is to respect, defend, and protect the values upon which the Constitution, adopted by the Nation, is based and whose actual consolidation, defence, and protection is the *raison d'être* of the state itself; otherwise, it would not be possible to regard the state as the common good of all society.

A fundamental requirement for a democratic state under the rule of law is the principle of the supremacy of the Constitution, which is consolidated in Paragraph 1 of Article 7 of the Constitution, where it is prescribed that any law or other act that contradicts the Constitution is invalid; this principle is, from various aspects, also consolidated in other articles of the Constitution, *inter alia*, Paragraph 1 of Article 6 thereof, which stipulates that the Constitution is an integral and directly applicable act (rulings of 24 December 2002, 29 October 2003, 5 March 2004, and 20 March 2007). The principle of the supremacy of the Constitution means that the Constitution takes an exceptional, the highest, place in the hierarchy of legal acts; no legal act may be in conflict with the Constitution; no one is permitted to violate the Constitution; the constitutional order must be protected (rulings of 24 December 2002, 29 October 2003, 5 March 2004, and 20 March 2007, the decision of 20 November 2009, and the ruling of 29 March 2012). The Constitutional Court has also held that all provisions of the Constitution should be interpreted by taking into account the principle of the supremacy of the Constitution (ruling of 5 March 2004). In its ruling of 13 December 2004, the Constitutional Court emphasised that the Constitution is the highest-ranking legal

act, supreme law, and the measure of the lawfulness and legitimacy of all other legal acts; the discretion of all law-making subjects is limited by supreme law – the Constitution; all legal acts, as well as the decisions of all state and municipal institutions and officials, must comply with and not contradict the Constitution.

... in its ruling of 1 December 1994, the Constitutional Court held that the norms of the Constitution are equally binding on all legal subjects, including initiative groups for referendums and groups of citizens of any size. In its ruling of 22 July 1994, the Constitutional Court noted that the Seimas, as well as other participants of the legislation process, while drafting and adopting legal acts, must bring them into line with the Constitution; this is one of the main measures ensuring the constitutional order and one of the fundamental principles of a state under the rule of law; this rule must equally be observed by any group of citizens expressing an initiative to call a referendum; a draft law or the draft provisions of a law proposed to be put to a referendum must be brought in line with the Constitution.

... the Constitution is also binding on the national community – the civil Nation itself. ... all other legal subjects, *inter alia*, law-making subjects, the institutions organising elections (referendums), initiative groups for referendums, as well as other groups of citizens, are equally bound by the Constitution and must observe and not violate the Constitution. In addition, it should be noted that the principle of the supremacy of the Constitution, *inter alia*, gives rise to the imperative that it is not permitted to put to a referendum any such possible decisions that would not comply with the requirements of the Constitution.

1.8.4.2.2. The integrity, direct application, and interpretation of the Constitution

The system of constitutional values

The Constitutional Court's ruling of 23 October 2002

The values consolidated in the Constitution constitute a harmonious system; there is a balance among them. ... in its ruling of 16 March 1999, the Constitutional Court held that, in the event of a clash between the values protected by the Constitution, it is necessary to find decisions ensuring that none of these values will be denied or unreasonably limited.

The principle of the integrity of the Constitution (Paragraph 1 of Article 6 of the Constitution)

The Constitutional Court's ruling of 25 November 2002

The Constitution is an integral and directly applicable act (Paragraph 1 of Article 6 of the Constitution); the principles and norms of the Constitution constitute a harmonious system. No provision of the Constitution may be interpreted in such a way that the content of another constitutional provision would be distorted or denied, since thereby the essence of the whole constitutional regulation would be distorted and the balance of the constitutional values would be disturbed.

The Constitution is a directly applicable act (Paragraph 1 of Article 6 of the Constitution)

The Constitutional Court's ruling of 24 December 2002

Paragraph 1 of Article 6 of the Constitution prescribes: "The Constitution shall be an integral and directly applicable act."

The discretion of the legislature to pass laws, including those that regulate the procedure for the application of the provisions of the Constitution, is limited by the Constitution; the legislature must pay regard to the norms and principles of the Constitution.

Thus, under the Constitution, the legislature does not have the right to establish such a legal regulation that would limit or deny the possibility of applying the Constitution directly.

The principle of the integrity of the Constitution (Paragraph 1 of Article 6 of the Constitution); the Constitutional Court investigates the compliance of impugned legal acts with the Constitution as an integral and harmonious system

The Constitutional Court's ruling of 30 May 2003

The Constitution is an integral act (Paragraph 1 of Article 6 of the Constitution). The constitutional norms are interrelated and constitute a single and harmonious system. No provision of the Constitution may be opposed to other provisions of the Constitution; no provision of the Constitution may be interpreted in a manner that would deny or distort the substance of other constitutional norms.

In cases where, following a received petition, the Constitutional Court investigates whether an impugned legal act (part thereof) is in conflict with the articles of the Constitution (parts thereof) indicated in the petition, it at the same time investigates whether the impugned legal act (part thereof) is in conflict with the Constitution – an integral and harmonious system (ruling of 24 December 2002).

In its ruling of 13 June 2000, the Constitutional Court held that particular norms set out in the articles (parts thereof) of the Constitution indicated by the petitioner may not be interpreted separately from other norms of the Constitution, as well as that the Constitutional Court, having found that the impugned legal act (part thereof) is in conflict with the articles (parts thereof) of the Constitution not indicated by the petitioner, has the powers to state this fact.

The interpretation of the Constitution in the jurisprudence of the Constitutional Court

The Constitutional Court's ruling of 30 May 2003

Under the Constitution, only the Constitutional Court has the powers to officially interpret the Constitution. The Constitutional Court does so by deciding whether laws are in conflict with the Constitution, whether other acts passed by the Seimas are in conflict with laws and the Constitution, and whether the acts of the President of the Republic and the Government are in conflict with laws and the Constitution. ...

... The principle of a state under the rule of law, which is consolidated in the Constitution, implies, *inter alia*, the continuity of the jurisprudence (ruling of 12 July 2001). This means that the Constitutional Court, while deciding analogous constitutional disputes, follows the doctrine that was formed in previous cases and reveals the content of the Constitution. When considering the compliance of laws and other legal acts (parts thereof) with the Constitution, the Constitutional Court develops the concept of constitutional provisions that was presented in its previous rulings and other acts, and it reveals new aspects of a particular regulation established by the Constitution, where such aspects are necessary for the consideration of the specific case.

The principle of the integrity of the Constitution (Paragraph 1 of Article 6 of the Constitution)

The Constitutional Court's ruling of 29 October 2003

The Constitution is an integral and directly applicable act (Paragraph 1 of Article 6 of the Constitution).

When interpreting the principle of the integrity of the Constitution, the Constitutional Court has held more than once in its rulings that norms set out in different articles of the Constitution are harmonised with one another and constitute a single whole, a harmonious system; no provision of the Constitution may be opposed to other provisions of the Constitution; no provision of the Constitution may be interpreted in a manner that would deny or distort the substance of other constitutional norms.

The Constitution has certain structural particularities. The Constitution consists of the Preamble, fourteen chapters, final provisions, as well as other constituent parts of the Constitution.

The integrity of the Constitution; the Constitution as legal reality; the Constitution as law without gaps; the spirit of the Constitution

The Constitutional Court's ruling of 25 May 2004

The Constitution as a legal act is expressed in a certain textual form and it has a certain linguistic expression. However, since law cannot be treated solely as a text which *expressis verbis* sets out certain legal provisions and rules of conduct, thus, also the Constitution as legal reality cannot be treated solely on the basis of its textual form. The Constitution cannot be understood as only the aggregate of explicit

provisions. The Constitution is an integral act (Paragraph 1 of Article 6 of the Constitution). The nature of the Constitution itself as the highest-ranking legal act and the idea of constitutionality imply that the Constitution may not have and does not have any gaps; thus, there cannot be and there is not such a legal regulation established in lower-ranking legal acts that could not be assessed in terms of its compliance with the Constitution. The Constitution as legal reality is comprised of various provisions, constitutional norms, and constitutional principles, which are directly consolidated in various formulations of the Constitution or are derived from them. Some constitutional principles are entrenched in constitutional norms formulated *expressis verbis*; others, although not entrenched *expressis verbis*, are reflected in them and are derived from constitutional norms, from other constitutional principles reflected in these norms, from the entirety of the constitutional legal regulation, as well as from the meaning of the Constitution as the act that consolidates and protects the system of major values of the national community – the civil Nation, and provides for the guidelines for the entire legal system. There may not exist and there is no contradiction between constitutional principles and constitutional norms; all constitutional norms and constitutional principles form a harmonious system. It is constitutional principles that organise all provisions of the Constitution and make them a harmonious whole; constitutional principles do not allow the existence of any internal contradictions in the Constitution or any such interpretation of the Constitution that could distort or deny the meaning of any provision thereof or any value consolidated and protected by the Constitution. The constitutional principles reveal not only the letter of the Constitution, but also the spirit of the Constitution – the values and objectives entrenched in the Constitution by the Nation, once it chose a certain textual form and verbal expression of its provisions, defined certain norms of the Constitution, and explicitly or implicitly established a certain constitutional legal regulation. Thus, there may not exist and there is no contradiction not only between constitutional principles and constitutional norms, but also between the spirit of the Constitution and the letter of the Constitution: the letter of the Constitution may not be interpreted or applied in the manner that would deny the spirit of the Constitution; it is possible to understand the spirit of the Constitution only when the constitutional legal regulation is perceived as a whole and only upon the assessment of the purpose of the Constitution as a social contract and the highest-ranking legal act. The spirit of the Constitution is expressed by the entirety of the constitutional legal regulation, i.e. it is expressed by all provisions of the Constitution: by the norms of the Constitution directly set out in the text of the Constitution and by the principles of the Constitution, including those that stem from the entirety of the constitutional legal regulation and the meaning of the Constitution as an act that consolidates and protects the system of the major values of the Nation, as well as provides for the guidelines for the entire legal system.

The Constitutional Court has held more than once that all provisions of the Constitution are interrelated and constitute a single and harmonious system, that there is a balance among the values consolidated in the Constitution, and that it is not permitted to interpret any provision of the Constitution in such a way that would distort or deny the content of another provision of the Constitution, since the substance of the entire constitutional legal regulation would thereby be distorted and the balance of constitutional values would be disturbed (rulings of 24 September 1998, 23 October 2002, 25 November 2002, 4 March 2003, 4 July 2003, 30 September 2003, 3 December 2003, and 15 April 2004).

The Constitution may not be interpreted only literally, by applying the sole linguistic (verbal) method, precisely due to the fact that the Constitution is an integral act and it is comprised of various provisions – constitutional norms and constitutional principles, among which there may not exist and there is no contradiction and which constitute a harmonious system, also due to the fact that the constitutional principles are derived from the entirety of the constitutional legal regulation expressing the spirit of the Constitution and from the meaning of the Constitution as the act that consolidates and protects the system of the major values of the national community – the civil Nation and provides for the guidelines for the entire legal system, as well as due to the fact that the letter of the Constitution may not be interpreted or applied in a manner that denies the spirit of the Constitution. When interpreting the Constitution, various methods of the interpretation of law must be applied: systemic, the one of general legal principles, logical, teleological, the one of the intentions of the legislature, the one of precedents, historical, comparative, etc.

Only such comprehensive interpretation of the Constitution may provide the conditions for the realisation of the purpose of the Constitution as a social contract and the highest-ranking legal act, and for ensuring that the meaning of the Constitution will not be deviated from, that the spirit of the Constitution will not be denied, and that the values on which the Constitution, adopted by the Nation itself, is based will be upheld in life.

The interpretation of the Constitution

The Constitutional Court's ruling of 13 December 2004

... none of the provisions of the Constitution may be interpreted in a manner whereby a certain constitutional principle would be denied or distorted, since the aspirations and/or values that were consolidated by the Nation in the Constitution adopted by it would also be denied and/or distorted, whereas the Nation, the sovereign founder of the State of Lithuania (Article 2 of the Constitution), constitutionally obligated the state (created by the Nation) to protect and defend those aspirations and values.

[...]

The interpretation of all provisions of the Constitution in the context of the constitutional principle of a state under the rule of law is a necessary precondition for the exhaustive interpretation of the Constitution.

The interpretation of the Constitution

The Constitutional Court's ruling of 28 March 2006

... if the Constitution were interpreted only literally, by applying the linguistic method, it could not be the supreme law of Lithuania, as it would virtually be identified with its textual form – the letter of the Constitution would be made absolute and the spirit of the Constitution would be ignored.

[...]

... the Constitutional Court has held that constitutional norms and principles may not be interpreted on the basis of legal acts adopted by the legislature and other law-making subjects, since thereby the supremacy of the Constitution in the legal system would be denied (rulings of 12 July 2001, 1 July 2004, and 13 December 2004 and the decision of 10 February 2005).

The interpretation of the Constitution in the jurisprudence of the Constitutional Court

The Constitutional Court's ruling of 9 May 2006

Under the Constitution, only the Constitutional Court has the powers to officially interpret the Constitution and to form the official constitutional doctrine. The provisions – norms and principles – of the Constitution are interpreted in the acts of the Constitutional Court. The Constitution is an integral act (Paragraph 1 of Article 6 of the Constitution); thus, the official constitutional doctrine is formed on the basis of the fact that all provisions of the Constitution are interrelated not only formally, but also by their content: the content of some provisions of the Constitution determines the content of its other provisions. The Constitutional Court has held in its acts more than once that all provisions of the Constitution constitute a harmonious system, that there is a balance among the values consolidated in the Constitution, that no provision of the Constitution can be interpreted only literally, that no provision of the Constitution may be opposed to other provisions of the Constitution, that no provision of the Constitution may be interpreted in such a way that the content of another constitutional provision would be distorted or denied, since thereby the essence of the whole constitutional regulation would be distorted and the balance of constitutional values would be disturbed. The official constitutional doctrine reveals, *inter alia*, the content of and interrelations among various constitutional provisions, a balance among constitutional values, and the essence of the constitutional legal regulation as a whole.

The interpretation of the Constitution

The Constitutional Court's ruling of 27 February 2012

... the Constitutional Court has held in its jurisprudence more than once that the Constitution may not be interpreted only literally, by applying the sole linguistic (verbal) method (*inter alia*, the rulings of 25 May 2004, 16 January 2006, and 24 September 2009); if the literal (linguistic, verbal) interpretation of the Constitution were made absolute, the content of the overall constitutional legal regulation would also be devalued and, if not all, then at least some values consolidated, defended, and protected by the Constitution would be ignored, and, possibly, the preconditions would be created for undermining the aspirations consolidated by the Nation in the Constitution adopted by referendum (ruling of 6 June 2006); it is not permissible to make absolute not only the literal (linguistic, verbal) method of the interpretation of the Constitution, but also any other method of the interpretation of the Constitution; when interpreting the Constitution, various methods of the interpretation of law must be applied: systemic, the one of general legal principles, logical, teleological, the one of the intentions of the legislature, the one of precedents, historical, comparative, etc.; only such comprehensive interpretation of the Constitution may provide the preconditions for the realisation of the purpose of the Constitution as a social contract and the highest-ranking legal act, and for ensuring that the meaning of the Constitution will not be deviated from, that the spirit of the Constitution will not be denied, and that the values on which the Constitution, adopted by the Nation itself, is based will be upheld in life (rulings of 25 May 2004, 13 December 2004, and 6 June 2006).

The principle of the integrity of the Constitution (Paragraph 1 of Article 6 of the Constitution)

The Constitutional Court's ruling of 24 January 2014

... amendments to the Constitution change the content of the provisions of the Constitution and interrelations between those provisions; also, the balance of the values consolidated in the Constitution might be changed; if some provisions of the Constitution are amended, there might be changes in the content of other provisions thereof, as well as in the content of the overall constitutional legal regulation. However, when amendments to the Constitution are made, the imperative that the Constitution is an integral act must be complied with (Paragraph 1 of Article 6 of the Constitution). The Constitutional Court has held on more than one occasion that all provisions of the Constitution are interrelated to the degree that the content of some provisions of the Constitution determines the content of other provisions thereof; the provisions of the Constitution constitute a single and harmonious system; no provision of the Constitution may be opposed to other provisions of the Constitution. The nature of the Constitution as the highest-ranking legal act and the idea of constitutionality imply that there are not, nor can there be, any gaps or internal contradictions in the Constitution (rulings of 25 May 2004, 13 December 2004, and 28 March 2006).

In view of this, it should be noted that, by means of amendments to the Constitution, the provisions of the Constitution or the values consolidated in those provisions may not be opposed against one another, *inter alia*, the legal regulation established in the chapters and articles of the Constitution and the constitutional legal regulation established in the constituent parts of the Constitution may not be opposed against each other. No amendment to the Constitution may create any such a new constitutional regulation under which a certain provision of the Constitution would deny or contradict another provision of the Constitution and it would be impossible to interpret those provisions as in harmony one with another. Thus, the imperative stems from Paragraph 1 of Article 6 of the Constitution whereby no amendments to the Constitution may violate the harmony of the provisions of the Constitution or the harmony of the values consolidated in those provisions.

1.8.4.2.3. The constituent part of the Constitution

The Law on the Procedure for the Entry into Force of the Constitution of the Republic of Lithuania is a constituent part of the Constitution and has the legal force of the Constitution

The Constitutional Court's ruling of 29 October 2003

... the provisions of the Law on the Procedure for the Entry into Force of the Constitution of the Republic of Lithuania are inseparably related to other provisions of the Constitution. The provisions consolidated in some articles of this law supplement other provisions of the Constitution, without which the former could not be implemented. Other articles of this law establish the particularities related to the implementation of the provisions of the Constitution during the period when the state institutions provided for by the Constitution were in the course of establishment and when the legal regulation required by the Constitution was still in the process of creation.

The Law on the Procedure for the Entry into Force of the Constitution of the Republic of Lithuania, which was adopted together with the Constitution by the Nation by referendum, may not itself be a non-constituent part of the Constitution, since the provisions of this law are inseparably related to the norms and principles of the Constitution and supplement other provisions of the Constitution, or establish the particularities of the implementation of particular provisions of the Constitution.

Thus, the Law on the Procedure for the Entry into Force of the Constitution of the Republic of Lithuania is a constituent part of the Constitution and the provisions of this law have the legal force of the Constitution.

The constitutional confirmation of membership in the European Union (Article 150 of the Constitution and the Constitutional Act on Membership of the Republic of Lithuania in the European Union)

The Constitutional Court's ruling of 14 March 2006

... the Republic of Lithuania became a Member State of the European Union on 1 May 2004.

On 13 July 2004, the Seimas adopted the Law on Supplementing the Constitution of the Republic of Lithuania with the Constitutional Act on Membership of the Republic of Lithuania in the European Union, and Supplementing Article 150 of the Constitution of the Republic of Lithuania; by Article 1 of this law, the Seimas supplemented the Constitution with the Constitutional Act of the Republic of Lithuania on Membership of the Republic of Lithuania in the European Union, which is a constituent part of the Constitution (Article 150 of the Constitution). The said Constitutional Act came into force on 14 August 2004. By means of it, membership of the Republic of Lithuania in the European Union was constitutionally confirmed (ruling of 13 December 2004).

The Constitutional Act on the Non-Alignment of the Republic of Lithuania to Post-Soviet Eastern Unions is a constituent part of the Constitution (Article 150 of the Constitution)

The Constitutional Court's ruling of 15 March 2011

On 8 June 1992, the Supreme Council, while invoking the acts of 16 February 1918 and 11 March 1990 on the restoration of the independent State of Lithuania and the will of the entire Nation expressed on 9 February 1991, adopted the Constitutional Act of the Republic of Lithuania on the Non-Alignment of the Republic of Lithuania to Post-Soviet Eastern Unions.

On 25 October 1992, by referendum, the Nation adopted the Constitution of the Republic of Lithuania, which came into force on 2 November 1992.

[...]

Under Article 150 of the Constitution, *inter alia*, the Constitutional Act on the Non-Alignment of the Republic of Lithuania to Post-Soviet Eastern Unions became a constituent part of the Constitution.

The constitutional acts forming a constituent part of the Constitution (Article 150 of the Constitution)

The Constitutional Court's ruling of 30 July 2020

Article 150 (wording of 13 July 2004) of the Constitution prescribes:

“The constituent part of the Constitution of the Republic of Lithuania shall be:
the Constitutional Law ‘On the State of Lithuania’ of 11 February 1991;

the Constitutional Act ‘On the Non-Alignment of the Republic of Lithuania to Post-Soviet Eastern Unions’ of 8 June 1992;

the Law ‘On the Procedure for the Entry into Force of the Constitution of the Republic of Lithuania’ of 25 October 1992;

the Constitutional Act ‘On Membership of the Republic of Lithuania in the European Union’ of 13 July 2004.”

Thus, according to Article 150 of the Constitution, the constitutional acts specified therein – the Constitutional Law of 11 February 1991 on the State of Lithuania, the Constitutional Act of 8 June 1992 on the Non-Alignment of the Republic of Lithuania to Post-Soviet Eastern Unions, the Law of 25 October 1992 on the Procedure for the Entry into Force of the Constitution of the Republic of Lithuania, and the Constitutional Act of 13 July 2004 on Membership of the Republic of Lithuania in the European Union – are a constituent part of the Constitution. Therefore, the provisions of these constitutional acts have the force of the Constitution and their alteration is subject to the procedure, explicitly and implicitly prescribed in the Constitution itself, for amending the provisions of these constitutional acts.

The Constitutional Act on Membership of the Republic of Lithuania in the European Union

The Constitutional Court’s ruling of 30 July 2020

The Constitutional Act on Membership of the Republic of Lithuania in the European Union, which is a constituent part of the Constitution, constitutionally confirmed membership of the Republic of Lithuania in the European Union.

As it is clear from the preamble to this constitutional act, it was adopted, *inter alia*, in executing “the will of the citizens of the Republic of Lithuania, as expressed in the referendum on membership of the Republic of Lithuania in the European Union, held on 10–11 May 2003”, and “seeking to ensure the fully fledged participation of the Republic of Lithuania in the European integration, as well as the security of the Republic of Lithuania and welfare of its citizens” (ruling of 24 January 2014). The Constitutional Court has emphasised that the fully fledged participation by the Republic of Lithuania, as a Member State, in the European Union is a constitutional imperative based on the expression of the sovereign will of the People; full membership by the Republic of Lithuania in the European Union is a constitutional value (*inter alia*, the rulings of 24 January 2014, 11 January 2019, and 6 February 2020).

The procedure for amending the constitutional acts forming a constituent part of the Constitution

See 1.8.4.2.4. Amendments to the Constitution and the stability of the Constitution, the ruling of 30 July 2020.

1.8.4.2.4. Amendments to the Constitution and the stability of the Constitution

The entry into force of a law on the alteration of the Constitution (Article 149 of the Constitution)

The Constitutional Court’s ruling of 24 December 2002

Paragraph 1 of Article 149 of the Constitution prescribes that the President of the Republic signs an adopted law on the alteration of the Constitution and officially promulgates it within five days. Paragraph 2 of the same article provides that, if the President of the Republic does not sign and promulgate such a law within the specified time, this law comes into force when the Speaker of the Seimas signs and promulgates it. The Constitution does not provide that the President of the Republic has the right of a delaying veto over laws amending the Constitution (ruling of 19 June 2002).

In addition, under Paragraph 3 of Article of 149 of the Constitution, a law on the alteration of the Constitution comes into force not earlier than one month after its adoption.

Thus, under Paragraph 3 of Article 149 of the Constitution, in a law amending the Constitution, the Seimas may set the date when the law amending the Constitution comes into force; however, it is not

permitted to set an earlier date than one month after the adoption of the law amending the Constitution. While adopting a law amending the Constitution, the Seimas may establish that a law amending the Constitution comes into force only at a later date than one month after the adoption of this law. If a law amending the Constitution does not set a date for its entry into force, then, under the Constitution, such a law amending the Constitution comes into force one month after its adoption.

The norm whereby the date for the entry into force of a law on the alteration of the Constitution is established must have the constitutional force and must be a norm of the Constitution itself; under the Constitution, it is not permitted that the date for the entry into force of a law on the alteration of the Constitution be established by a lower-ranking legal act. It should be noted that the date for the entry into force of a legal act and the date for the beginning of the application of its particular norms need not necessarily coincide: it may be stipulated that certain provisions of the legal act become applicable at another (later) date. This may not be established by means of a legal act whose force is lower than that of the Constitution, as thereby the hierarchy of legal acts established in the Constitution and the supremacy of the Constitution would be violated.

Thus, the fact that certain provisions of a law on the alteration of the Constitution become applicable not from the moment of the entry into force of that law, but at another (later) date, must *expressis verbis* be established in the law on the alteration of the Constitution.

Thus, if a law on the alteration of the Constitution does not establish another (later) date of the beginning of the application of its certain provisions, the said law on the alteration of the Constitution (its all provisions) must be applied as of the day of its entry into force. This means that as of the said day in question the respective amendment (its all provisions) to the Constitution must be applied.

The stability of the Constitution

The Constitutional Court's ruling of 28 March 2006

The Constitutional Court has held that the Constitution, as supreme law, must be a stable act (rulings of 16 January 2006 and 14 March 2006). The stability of the Constitution is such its feature that, together with its other features (*inter alia*, and, first of all, with the special, supreme, legal force of the Constitution) makes the constitutional legal regulation different from the legal (ordinary) regulation established by means of lower-ranking legal acts (ruling of 14 March 2006) and makes the Constitution different from all other legal acts. The stability of the Constitution is a great constitutional value. The Constitution should not be altered if there is no legal necessity to do so. This is guaranteed by a more difficult and more complex procedure for making amendments to the Constitution compared with constitutional and ordinary laws (ruling of 14 March 2006), in particular by the fact that special procedural requirements are established for the alteration of certain provisions of the Constitution (Article 1, Chapter I "The State of Lithuania", Chapter XIV "The Alteration of the Constitution"). The stability of the Constitution is one of the preconditions for securing the continuity of the state and respect for the constitutional order and law, as well as for ensuring the implementation of the objectives that are declared in the Constitution by the Lithuanian nation and upon which the Constitution itself is founded.

One of the conditions ensuring the stability of the Constitution as legal reality is the stability of its text. ... the nature of the Constitution and the idea of constitutionality imply that the Constitution may not have, nor does it have, any gaps or internal contradictions. Thus, the text of the Constitution must not be modified, for example, upon a mere change in terminology, *inter alia*, legal terminology (ruling of 16 January 2006). The meaning of the Constitution as a particularly stable legal act would also be ignored if interventions into its text were made every time when certain social relationships that must be legally regulated undergo changes (e.g. when technological possibilities of certain kinds of activity expand to the extent that was perhaps impossible to predict at the time when the text of the Constitution was drafted).

In this context, it should be particularly emphasised that the further interpretation and development of the official constitutional doctrine, *inter alia*, the reinterpretation of the official constitutional doctrinal provisions, including such reinterpretation where the official constitutional doctrine is modified, in the acts of the Constitutional Court adopted in new constitutional justice cases makes it possible to disclose the

deep potential of the Constitution without changing its text and, in this respect, to adjust the Constitution to changes in social life and to the constantly changing conditions of the life of society and the state, as well as to ensure the viability of the Constitution as the legal basis of the life of society and the state. The formation and development of the official constitutional doctrine is a function of constitutional justice. In the acts of the Constitutional Court adopted in new constitutional justice cases, the further interpretation and development, *inter alia*, reinterpretation, of the official constitutional doctrinal provisions, including where reinterpretation modifies the official constitutional doctrine, makes it possible not to make any intervention into the text of the Constitution where such intervention is not legally necessary. The said acts adopted by the Constitutional Court thereby contribute to ensuring the stability of the text of the Constitution and the constitutional order.

Reinterpreting (modifying) the official constitutional doctrine after amending the Constitution

The Constitutional Court's ruling of 28 March 2006

In cases where amendments to the Constitution are made, it is necessary (or it may be necessary) to reinterpret the official constitutional doctrinal provisions so that the official constitutional doctrine would be modified.

On the entry into force of an amendment to the Constitution that amends (or repeals) a certain provision of the Constitution on the basis of which (i.e. in the course of the interpretation of which) the previous constitutional doctrine was formed (on a particular issue of the constitutional legal regulation), the Constitutional Court, under the Constitution, has the exceptional powers to state whether it is still possible (and to what extent) to invoke the official constitutional doctrine formulated by the Constitutional Court on the basis of the previous provisions of the Constitution, or whether it is no longer possible to invoke it (and to what extent) in the course of interpreting the Constitution (rulings of 13 May 2004, 16 January 2006, 24 January 2006, and 14 March 2006).

... it may also be necessary to reinterpret the official constitutional doctrinal provisions so that the official constitutional doctrine would be modified when such an amendment to the Constitution is made (certain provision of the Constitution is amended or repealed or a new provision is consolidated in the Constitution) by which the content of the overall legal regulation is modified in substance, even though the specific provision of the Constitution on the basis of which (i.e. in the course of interpreting which) the previous official constitutional doctrine on a certain issue of the constitutional legal regulation was formulated is not formally altered. In such cases, the Constitutional Court also has the exceptional powers to state whether it is still possible (and to what extent) to invoke the previous official constitutional doctrine (both as a whole and on each individual issue of the constitutional legal regulation) or whether it is no longer possible to invoke it (and to what extent) in the course of interpreting the Constitution.

Amendments to the Constitution do not bring a legal act that was declared unconstitutional back to the legal system and do not provide the grounds for reviewing the acts of the Constitutional Court

The Constitutional Court's ruling of 28 March 2006

No amendments or supplements made to a higher-ranking legal act (including the Constitution) after the Constitutional Court declared, referring to the previous provisions of the Constitution, a certain legal act (part thereof) passed by the Seimas, the President of the Republic, or the Government or adopted by referendum to be in conflict with a certain higher-ranking legal act, *inter alia* (and, first of all), with the Constitution, may bring back the legal act (part thereof) that was declared to be in conflict with a certain higher-ranking legal act, *inter alia* (and, first of all), with the Constitution, to the Lithuanian legal system. Under the Constitution, the Constitutional Court does not have the powers to bring back such legal acts (parts thereof) to the Lithuanian legal system, either. In the same vein, no amendments or supplements made to a higher-ranking legal act (including the Constitution) after the Constitutional Court declared, referring to the previous provisions of the Constitution, a certain legal act (part thereof) passed by the Seimas, the President of the Republic, or the Government or adopted by referendum to be in compliance

with a certain higher-ranking legal act, *inter alia* (and, first of all), with the Constitution, mean that the decision on the said legal act can or must be changed with retroactive effect. On the other hand, when an amendment to the Constitution is made, the legislature and other law-making subjects must harmonise the legal acts that they have passed and that are still valid with the amended legal regulation; however, this does not imply that the examined constitutional justice cases on the compliance of a certain previous legal regulation with a certain higher-ranking legal regulation, *inter alia* (and, first of all), with the Constitution, must be renewed or that the decisions adopted therein must be reviewed and changed.

This is also *mutatis mutandis* applicable to such cases where the Constitutional Court, referring to the previous provisions of the Constitution, presents a conclusion on any of the questions specified in Paragraph 3 of Article 105 of the Constitution ...: such a conclusion remains valid even if the provisions of the Constitution on the basis of which the respective conclusion was made and presented are amended or repealed. Moreover, this is *mutatis mutandis* applicable to decisions of the Constitutional Court that are adopted without investigating on the merits the compliance of an impugned legal act (part thereof) with the Constitution (another higher-ranking legal act), but by properly (clearly and rationally) refusing, by means of a reasoned decision, to consider a petition or by dismissing the instituted legal proceedings (case) (if a particular petition has been received at the Constitutional Court and the preparation of a constitutional justice case for a hearing at the Constitutional Court has begun or if it has already been considered in a hearing at the Constitutional Court).

Thus, the Constitution does not give grounds for bringing back retroactively a legal regulation that was declared to be in conflict with a certain higher-ranking legal regulation, *inter alia* (and, first of all), with one established in the Constitution, to the Lithuanian legal system, or for questioning and annulling the respective rulings, conclusions, or decisions of the Constitutional Court that were constitutionally justifiable at the moment when they were adopted. A different interpretation would not only result in the disregard of the provisions of the Constitution consolidating the institution of constitutional justice – constitutional judicial control, *inter alia*, the fact that the decisions of the Constitutional Court are final and not subject to appeal, but also would lead to the denial of the stability of the Constitution, the predictability of decisions adopted by the Constitutional Court, and the legitimate expectations of various legal subjects where the said expectations are created by the aforementioned decisions.

The alteration of the Constitution; amendments to the Constitution may not violate the harmony of the provisions of the Constitution

The Constitutional Court's ruling of 24 January 2014

The constitutional legal regulation governing the alteration of the Constitution is determined by the concept, nature, and purpose of the Constitution itself.

[...]

... amendments to the Constitution change the content of the provisions of the Constitution and interrelations between those provisions; also, the balance of the values consolidated in the Constitution might be changed; if some provisions of the Constitution are amended, there might be changes in the content of other provisions thereof, as well as in the content of the overall constitutional legal regulation. However, when amendments to the Constitution are made, the imperative that the Constitution is an integral act must be complied with (Paragraph 1 of Article 6 of the Constitution). The Constitutional Court has held on more than one occasion that all provisions of the Constitution are interrelated to the degree that the content of some provisions of the Constitution determines the content of other provisions thereof; the provisions of the Constitution constitute a single and harmonious system; no provision of the Constitution may be opposed to other provisions of the Constitution. The nature of the Constitution as the highest-ranking legal act and the idea of constitutionality imply that there are not, nor can there be, any gaps or internal contradictions in the Constitution (rulings of 25 May 2004, 13 December 2004, and 28 March 2006).

In view of this, it should be noted that, by means of amendments to the Constitution, the provisions of the Constitution or the values consolidated in those provisions may not be opposed against one another,

inter alia, the legal regulation established in the chapters and articles of the Constitution and the constitutional legal regulation established in the constituent parts of the Constitution may not be opposed against each other. No amendment to the Constitution may create any such a new constitutional regulation under which a certain provision of the Constitution would deny or contradict another provision of the Constitution and it would be impossible to interpret those provisions as in harmony one with another. Thus, the imperative stems from Paragraph 1 of Article 6 of the Constitution whereby no amendments to the Constitution may violate the harmony of the provisions of the Constitution or the harmony of the values consolidated in those provisions.

The ... concept, nature, and purpose of the Constitution, the stability of the Constitution as a constitutional value, and the imperative of harmony among the provisions of the Constitution imply certain substantive and procedural limitations on the alteration of the Constitution. The substantive limitations on the alteration of the Constitution are the limitations consolidated in the Constitution regarding the adoption of constitutional amendments of certain content; the procedural limitations on the alteration of the Constitution are related to the special procedure for the alteration of the Constitution, which is provided for in the Constitution.

The substantive limitations on the alteration of the Constitution

The Constitutional Court's ruling of 24 January 2014

The substantive limitations on the alteration of the Constitution stem from the overall constitutional legal regulation and they are designed to defend universal values upon which the Constitution as supreme law and as a social contract and the state as the common good of all society are based, as well as to protect the harmony of these values and the harmony of the provisions of the Constitution.

[...]

It has been mentioned that the imperative stems from the Constitution whereby no amendments to the Constitution may violate the harmony of the provisions of the Constitution or the harmony of the values consolidated in those provisions. In view of this, it should be noted that, under the Constitution, it is not permitted to make any such amendments to the Constitution that would deny at least one of the constitutional values that constitute the foundation of the State of Lithuania as the constitutionally consolidated common good of all society – the independence of the state, democracy, the republic, and the innate nature of human rights and freedoms, with the exception of the cases where Article 1 of the Constitution would be altered in the manner prescribed by Paragraph 1 of Article 148 of the Constitution, or Article 1 of the Constitutional Law on the State of Lithuania, which is a constituent part of the Constitution, would be altered in the manner prescribed by Article 2 of this law.

[...]

... under the Constitution, the provisions of the Constitutional Act on the Non-Alignment of the Republic of Lithuania to Post-Soviet Eastern Unions should have the same protection as the provision “The State of Lithuania shall be an independent democratic republic”, which is stipulated in Article 1 of the Constitution and Article 1 of the Constitutional Law on the State of Lithuania. In view of this, it needs to be held that, although Article 148 of the Constitution does not explicitly regulate the procedure for the alteration of the constituent parts of the Constitution, *inter alia*, the procedure for the alteration of the provisions of the Constitutional Act on the Non-Alignment of the Republic of Lithuania to Post-Soviet Eastern Unions, the requirement stems from the very essence of the provisions of the Constitutional Act on the Non-Alignment of the Republic of Lithuania to Post-Soviet Eastern Unions to amend those provisions under the same procedure as established for the alteration of the constitutional provision “The State of Lithuania shall be an independent democratic republic”, i.e. under the same procedure as established in Article 2 of the Constitutional Law on the State of Lithuania.

It has been mentioned that the imperative stems from Paragraph 1 of Article 6 of the Constitution whereby no amendments to the Constitution may violate the harmony of the provisions of the Constitution or the harmony of the values consolidated in those provisions. In view of this, it should be noted that, under

the Constitution, no amendments may be made to the Constitution that would deny the provisions of the Constitutional Act on the Non-Alignment of the Republic of Lithuania to Post-Soviet Eastern Unions, with the exception of the cases where the respective provisions of this constitutional act would be altered under the same procedure as provided for in Article 2 of the Constitutional Law on the State of Lithuania.

[...]

... The Constitutional Act on Membership of the Republic of Lithuania in the European Union establishes, *inter alia*, the constitutional foundations of membership of the Republic of Lithuania in the European Union. If these constitutional foundations were not consolidated in the Constitution, the Republic of Lithuania could not be a full member of the European Union It needs to be emphasised that these constitutional foundations of membership of the Republic of Lithuania in the European Union were consolidated in the Constitution by acting upon the will of the Nation that the Republic of Lithuania would be a member of the European Union.

In view of this, it needs to be held that these foundations in themselves and the expression of the sovereign will of the Nation, as the source of the said foundations, determine the requirement that the provisions of Articles 1 and 2 of the Constitutional Act on Membership of the Republic of Lithuania in the European Union be altered or annulled only by referendum.

It has been mentioned that ... amendments to the Constitution may not violate the harmony of the provisions of the Constitution or the harmony of the values consolidated in those provisions. In view of this, it should be noted that, under the Constitution, as long as the aforesaid constitutional foundations of membership of the Republic of Lithuania in the European Union, which are consolidated in Articles 1 and 2 of the Constitutional Act on Membership of the Republic of Lithuania in the European Union, are not annulled by referendum, it is not permitted to make any such amendments to the Constitution that would deny the obligations of the Republic of Lithuania arising from its membership in the European Union.

Respect for international law, which is also a constitutional value, is related to the geopolitical orientation of the State of Lithuania, which is consolidated in the Constitution.

It should be noted that, under Paragraph 1 of Article 135 of the Constitution, in implementing its foreign policy, the Republic of Lithuania follows the universally recognised principles and norms of international law. The constitutional principle of respect for international law, i.e. the principle of *pacta sunt servanda*, as consolidated in this provision, means the imperative of fulfilling in good faith the obligations assumed by the Republic of Lithuania under international law, *inter alia*, international treaties.

[...]

It has been mentioned that amendments to the Constitution may not violate the harmony of the provisions of the Constitution or the harmony of the values consolidated in those provisions. In view of this, it should be noted that, under the Constitution, it is not permit to make any such amendments to the Constitution that would deny the international obligations of the Republic of Lithuania (*inter alia*, the obligations of the Republic of Lithuania arising from its membership in NATO, which is implied by the ... geopolitical orientation of the State of Lithuania) and, at the same time, would deny the constitutional principle of *pacta sunt servanda*, as long as the said international obligations are not renounced in accordance with the norms of international law.

It should be noted that, along with Article 1 of the Constitution, the alteration of the other provisions of Chapter I “The State of Lithuania” of the Constitution, as well as of those of Chapter XIV “The Alteration of the Constitution”, is also subject to a special requirement: according to Paragraph 2 of Article 148 of the Constitution, they may be altered only by referendum. Thus, the values and principles consolidated in these provisions of the Constitution have greater protection compared with those consolidated in other provisions of the Constitution, which may also be amended by the Seimas (Paragraph 3 of Article 148 of the Constitution).

It has been mentioned that amendments to the Constitution may not violate the harmony of the provisions of the Constitution or the harmony of the values consolidated in those provisions. In view of this, it should be noted that, under the Constitution, the Seimas is not permitted to introduce any such amendments to the Constitution that would deny the provisions of Chapter I “The State of Lithuania” and

Chapter XIV “The Alteration of the Constitution” of the Constitution. If the Seimas adopted such amendments to the Constitution, it would also violate the principle, consolidated in Paragraph 2 of Article 5 of the Constitution, that the scope of powers is limited by the Constitution.

It should also be noted that, in view of the imperative of harmony among the provisions of the Constitution, it is also not permitted to make, by referendum, any such amendments to the Constitution that would, in the absence of the respective amendments to the provisions of Chapter I “The State of Lithuania” and Chapter XIV “The Alteration of the Constitution” of the Constitution, lay down the constitutional legal regulation contradicting the provisions of Chapters I and XIV of the Constitution.

The procedural limitations on the alteration of the Constitution are a special procedure for the alteration of the Constitution (Chapter XIV of the Constitution)

The Constitutional Court’s ruling of 24 January 2014

As mentioned before, the procedural limitations on the alteration of the Constitution are related to the special procedure for the alteration of the Constitution, which is provided for in the Constitution. This procedure is established in Chapter XIV “The Alteration of the Constitution” of the Constitution.

... the stability of the Constitution constitutes such a feature of the Constitution that, together with its other features, *inter alia*, and, primarily, together with the special, supreme, legal force of the Constitution, makes the constitutional legal regulation different from the legal (ordinary) regulation laid down in lower-ranking legal acts. On the other hand, the stability of the Constitution does not deny the possibility of making amendments to the Constitution when this is objectively necessary (ruling of 14 March 2006); the Constitution should not be altered if there is no legal necessity to do so (ruling of 28 March 2006). As the Constitutional Court has noted, this is guaranteed, *inter alia*, by a more difficult and more complex procedure for making amendments to the Constitution compared with the procedure for amending constitutional and ordinary laws (rulings of 14 March 2006 and 28 March 2006).

In this context, it should be mentioned that Items 1 and 2 of Article 67 of the Constitution establish the separate powers of the Seimas to consider amendments to the Constitution and to adopt them, as well as to pass laws. It also needs to be mentioned that the adoption of laws, *inter alia*, the adoption of constitutional laws, is regulated in Articles 68–72 of the Constitution, while the alteration of the Constitution is regulated in the separate Chapter XIV “The Alteration of the Constitution” (Articles 147–149); the provisions of Chapter XIV “The Alteration of the Constitution” of the Constitution have greater protection: as mentioned before, under Paragraph 2 of Article 148 of the Constitution, these provisions may be amended only by referendum, while the provisions of Articles 68–72 of the Constitution can also be amended by the Seimas.

Thus, under the Constitution, different procedures for amending constitutional law and ordinary law are established. The special procedure for the alteration of the Constitution may not be equated with the adoption of laws (*inter alia*, constitutional ones); in order to secure the stability of the constitutional legal regulation governing the alteration of the Constitution, a special procedure for amending this regulation is established. It should be noted that such a constitutional legal regulation is established, *inter alia*, in an attempt to ensure that the Constitution would be amended only when it is necessary and that any hasty amendments to the Constitution could be prevented.

The special procedure for making amendments to the Constitution, which is established in the Constitution, includes, *inter alia*, the following special requirements.

Under Paragraph 2 of Article 147 of the Constitution, during a state of emergency or martial law, the Constitution may not be amended. No such prohibition is established for the adoption of laws.

Under Paragraphs 1 and 2 of Article 148 of the Constitution, the powers of the Seimas to amend the Constitution are limited: the provisions of Article 1 and the other provisions of Chapter I “The State of Lithuania”, as well as the provisions of Chapter XIV “The Alteration of the Constitution”, may be altered only by referendum.

Paragraph 1 of Article 147 of the Constitution specifies the special subjects that have the right to submit a motion to alter or supplement the Constitution to the Seimas: a group of not less than 1/4 of all

the members of the Seimas or not less than 300 000 voters; the said subjects are, in principle, different from the subjects that have the legislative initiative to adopt laws – the members of the Seimas, the President of the Republic, the Government, and 50 000 citizens – which are established in Article 68 of the Constitution.

Paragraph 3 of Article 148 of the Constitution establishes a special procedure for the adoption of amendments to the Constitution at the Seimas: amendments to the Constitution must be considered and voted on by the Seimas twice; there must be a break of not less than three months between the votes. No such requirement that laws must be considered and voted on by the Seimas twice is established in the Constitution with respect to the adoption of laws.

Paragraph 3 of Article 148 of the Constitution establishes the requirement of a special qualified majority of votes of the members of the Seimas if a law amending the Constitution is adopted: a draft law on the alteration of the Constitution is deemed adopted by the Seimas if, during each of the votes, not less than $\frac{2}{3}$ of all the members of the Seimas vote in favour thereof. No such requirement of a special qualified majority of votes is established as regards the adoption of laws: according to Article 69 of the Constitution, laws are deemed adopted if the majority of the members of the Seimas participating in the sitting vote in favour thereof (Paragraph 2); constitutional laws are adopted if more than half of all the members of the Seimas vote in favour thereof and they are altered by not less than a $\frac{3}{5}$ majority vote of all the members of the Seimas (Paragraph 3).

Paragraph 3 of Article 148 of the Constitution establishes a special limitation on submitting a failed constitutional amendment to the Seimas for reconsideration: it may be submitted not earlier than after one year. The Constitution establishes no such limitation as regards the adoption of laws.

Paragraphs 1 and 2 of Article 149 of the Constitution establish a special procedure for the promulgation of a law amending the Constitution: the President of the Republic signs an adopted law on the alteration of the Constitution and officially promulgates it within five days; if the President of the Republic does not sign and promulgate such a law within the specified time, the Speaker of the Seimas signs and promulgates it. Under Article 71 of the Constitution, within ten days of receiving a law adopted by the Seimas, the President of the Republic either signs and officially promulgates the law or, on reasonable grounds, refers it back to the Seimas for reconsideration (Paragraph 1); if the law adopted by the Seimas is neither referred back nor signed by the President of the Republic within the specified period, the law comes into force after it is signed and officially promulgated by the Speaker of the Seimas (Paragraph 2).

Thus, when the President of the Republic promulgates a law amending the Constitution, his/her powers are restricted to a larger extent in comparison with the promulgation of other laws: the Constitution does not provide that the President of the Republic has the right of a delaying veto in connection with laws amending the Constitution (rulings of 19 June 2002 and 24 December 2002). The alteration of the Constitution by the Seimas only when it is necessary to do so and the prevention of any hasty amendments to the Constitution are ensured by other special requirements established in the Constitution (*inter alia*, the Constitution establishes the special subjects who have the right to submit a motion to alter or supplement the Constitution to the Seimas, the requirement that amendments to the Constitution must be considered and voted on by the Seimas twice, and the requirement of a special qualified majority of votes of $\frac{2}{3}$ of all the members of the Seimas if amendments to the Constitution are adopted).

Paragraph 3 of Article 149 of the Constitution establishes a special procedure for the entry into force of a law amending the Constitution: a law amending the Constitution comes into force not earlier than one month after its adoption. No such time limit of the entry into force of a law is established with respect to the entry into force of other laws adopted by the Seimas: under Paragraph 1 of Article 70 of the Constitution, laws adopted by the Seimas come into force after they are signed and officially promulgated by the President of the Republic, unless the laws themselves establish a later date for their entry into force.

It should be noted that the provision of Paragraph 3 of Article 149 of the Constitution is also applied to the situation specified in Paragraph 2 of the same article, where the Speaker of the Seimas officially promulgates a law amending the Constitution: the provision of Paragraph 2 of Article 149 of the Constitution, under which, if the President of the Republic does not sign and promulgate a law amending

the Constitution within five days, this law comes into force “when the Speaker of the Seimas signs and promulgates it”, must be interpreted in conjunction with the provision of Paragraph 3 of this article and cannot deny that provision.

The concept of a motion to alter or supplement the Constitution (Paragraph 1 of Article 147 of the Constitution)

The Constitutional Court’s ruling of 24 January 2014

Paragraph 1 of Article 147 of the Constitution prescribes: “A motion to alter or supplement the Constitution of the Republic of Lithuania may be submitted to the Seimas by a group of not less than 1/4 of all the Members of the Seimas or not less than 300 000 voters.”

The notion “a motion to alter or supplement the Constitution of the Republic of Lithuania”, as employed in Paragraph 1 of Article 147 of the Constitution, should not be interpreted only literally as meaning an abstract proposal or idea, lacking clarity and concreteness, to alter or supplement the Constitution. Such interpretation of this notion would be constitutionally unfounded, since it would mean that the subjects that are provided for in Paragraph 1 of Article 147 of the Constitution and have the right to submit a motion to amend the Constitution would be able to submit any proposal to amend or supplement the Constitution to the Seimas, *inter alia*, such a proposal that would contain only an idea or purpose of the motion to amend or supplement the Constitution, but not a concrete text of an amendment to the Constitution, and the Seimas would have to consider such a proposal; if such a proposal to amend or supplement the Constitution that contains no specific formulated provision amending or supplementing the Constitution were submitted to the Seimas for consideration, *inter alia*, such a proposal to amend or supplement the Constitution that contains no indication of a specific article (paragraph or item thereof) of the Constitution that is being proposed to be amended or supplemented, there would be no object for consideration at the Seimas.

Thus, the notion “a motion to alter or supplement the Constitution of the Republic of Lithuania” of Paragraph 1 of Article 147 of the Constitution means that this is a draft amendment to the Constitution, i.e. a draft law amending the Constitution.

The subjects that propose a motion to alter or supplement the Constitution (Paragraph 1 of Article 147 of the Constitution)

The Constitutional Court’s ruling of 24 January 2014

It has been mentioned that Paragraph 1 of Article 147 of the Constitution specifies the special subjects that have the right to submit a motion to alter or supplement the Constitution to the Seimas: a group of not less than 1/4 of all the members of the Seimas or not less than 300 000 voters; the said subjects are, in principle, different from the subjects that have the legislative initiative to adopt laws – members of the Seimas, the President of the Republic, the Government, and 50 000 citizens – which are established in Article 68 of the Constitution.

It should be noted that, under Paragraph 1 of Article 147 of the Constitution, the subjects specified therein that propose a motion to alter the Constitution, i.e. a group of not less than 1/4 of all the members of the Seimas or not less than 300 000 voters, have the same right to submit a motion for amending the Constitution to the Seimas. It should also be noted that this right of the said subjects, i.e. a group of not less than 1/4 of all the members of the Seimas or not less than 300 000 voters, who propose a motion to alter the Constitution under Paragraph 1 of Article 147 of the Constitution is an exclusive right, i.e. only these subjects have the right to submit to the Seimas a concrete draft amendment to the Constitution – a concrete draft law amending the Constitution. Under the Constitution, the said right is not conferred on any other subjects. Such a right is not conferred on, *inter alia*, the subjects with the legislative initiative to adopt laws – individual members of the Seimas, the President of the Republic, the Government, and 50 000 citizens, which are specified in Article 68 of the Constitution.

It should also be noted that the exclusive right to submit a motion to alter or supplement the Constitution to the Seimas, as established in Paragraph 1 of Article 147 of the Constitution for the subjects

that have the right to submit a motion to alter the Constitution, i.e. a group of not less than 1/4 of all the members of the Seimas or not less than 300 000 voters, means that, first of all, these subjects, when they submit their amendment to the Constitution, have the right to assess the objective legal necessity of such an amendment; this right also means that only the authorised representatives of the said subjects can submit a draft law amending the Constitution to the Seimas for consideration, i.e. to present such a draft at a sitting of the Seimas.

The consideration of a motion to alter or supplement the Constitution at the Seimas (Paragraph 1 of Article 147 and Paragraph 3 of Article 148 of the Constitution)

The Constitutional Court's ruling of 24 January 2014

... Paragraph 1 of Article 147 of the Constitution should be interpreted in conjunction with Paragraph 3 of Article 148 thereof, which provides for a special procedure for the adoption of amendments to the Constitution at the Seimas – the requirement of a special qualified majority of votes of the members of the Seimas in order to adopt a law amending the Constitution: amendments to the Constitution concerning the provisions of the chapters of the Constitution other than its Chapters I and XIV must be considered and voted on by the Seimas twice; there must be a break of not less than three months between the votes; a draft law on the alteration of the Constitution is deemed adopted by the Seimas if, during each of the votes, not less than 2/3 of all the members of the Seimas vote in favour thereof.

It has been mentioned that, under Paragraph 1 of Article 147 of the Constitution, the subjects specified therein that propose a motion to alter the Constitution, i.e. a group of not less than 1/4 of all the members of the Seimas or not less than 300 000 voters, have the same right to submit a motion for amending the Constitution to the Seimas; this right is an exclusive one, i.e. only the said subjects have the right to submit to the Seimas a concrete draft amendment to the Constitution – a draft law amending the Constitution. Thus, under the Constitution, only those draft laws amending the Constitution that are submitted by a group of not less than 1/4 of all the members of the Seimas or not less than 300 000 voters may be considered and voted on by the Seimas; the Seimas may not consider and vote on any such a motion to alter or supplement the Constitution that would be proposed by subjects other than those specified in Paragraph 1 of Article 147 of the Constitution.

If the Constitution were interpreted in a different manner (*inter alia*, that, in the course of considering a motion to amend or supplement the Constitution at the Seimas, a subject other than those provided for in Paragraph 1 of Article 147 of the Constitution could submit a new motion to amend or supplement the Constitution – a new draft law amending the Constitution – to the Seimas for further consideration), the exclusive right established in Paragraph 1 of Article 147 of the Constitution for a group of not less than 1/4 of all the members of the Seimas or not less than 300 000 voters to submit a motion to alter or supplement the Constitution to the Seimas would be denied, as well as the preconditions would be created for making use of a motion submitted by a subject specified in Paragraph 1 of Article 147 of the Constitution to alter or supplement the Constitution as a pretext for adopting an amendment to the Constitution with a virtually different content. In addition, such interpretation would be incompatible with the ... purpose of the constitutional legal regulation governing the procedure for the alteration of the Constitution – to ensure that the Constitution would be altered only when this is necessary and that any hasty amendments to the Constitution could be prevented.

It should be noted that the exclusive right established in Paragraph 1 of Article 147 of the Constitution for the subjects specified therein, i.e. a group of not less than 1/4 of all the members of the Seimas or not less than 300 000 voters, to submit a motion to alter or supplement the Constitution to the Seimas does not mean that the Seimas, when considering the submitted motion, is not allowed at all to change the text of a draft law amending the Constitution. However, changes in the text of a draft law amending the Constitution cannot deny the exclusive right to submit a motion to alter or supplement the Constitution to the Seimas, which is established in Paragraph 1 of Article 147 of the Constitution for a group of not less than 1/4 of all the members of the Seimas or not less than 300 000 voters; as mentioned before, under the Constitution, only those draft laws amending the Constitution that are submitted by a group of not less than 1/4 of all the

members of the Seimas or not less than 300 000 voters may be considered and voted on by the Seimas; the Seimas may not consider and vote on any such a motion to alter or supplement the Constitution that would be proposed by subjects other than those specified in Paragraph 1 of Article 147 of the Constitution. Therefore, under the Constitution, when the Seimas considers the draft laws amending the Constitution that have been submitted by the subjects specified in Paragraph 1 of Article 147 of the Constitution, it may introduce only such modifications to the proposed draft laws that do not affect the content of those draft laws in substance, i.e. non-substantial modifications that are aimed at editing the proposed draft amendments to the Constitution in order to improve the texts of those draft laws in terms of the Lithuanian language and legal technique or that make the proposed draft formulations more accurate or concrete without changing the scope of the proposed constitutional legal regulation.

In view of this, it should be noted that Paragraph 1 of Article 147 of the Constitution gives rise to the prohibition on changing in substance, during the consideration in the Seimas, the content of a proposed draft law amending the Constitution, submitted by a group of not less than 1/4 of all the members of the Seimas or not less than 300 000 voters, *inter alia*, in such a way that would distort the objective of the proposed constitutional legal regulation, would alter the scope of the proposed constitutional legal regulation, would introduce the essentially different means to achieve the objective sought by the proposed constitutional legal regulation, or would propose that a different provision of the Constitution be altered.

In this context, it should also be noted that a substantially changed draft law amending the Constitution must be regarded as a new draft law – a new motion to alter or supplement the Constitution, which can be submitted, according to Paragraph 1 of Article 147 of the Constitution, by a group of not less than 1/4 of all the members of the Seimas or not less than 300 000 voters.

[...]

... under the Constitution, structural subunits of the Seimas, *inter alia*, its committees, as well as individual members of the Seimas, do not have the right to submit a draft law amending the Constitution that would be different in substance from a draft law amending the Constitution that was submitted by a group of not less than 1/4 of all the members of the Seimas, *inter alia*, where the difference constitutes a different scope of the proposed constitutional legal regulation, or virtually different means of the constitutional legal regulation in order to achieve the objective sought, or a proposal for an amendment of a different provision of the Constitution.

... under the Constitution, when a draft law amending the Constitution submitted by a group of not less than 1/4 of all the members of the Seimas is considered at the Seimas, the structural subunits of the Seimas, *inter alia*, its committees, as well as individual members of the Seimas, have the right to propose non-substantial amendments to the draft law under consideration by the Seimas, to propose that the draft law be rejected, also to propose that the group of not less than 1/4 of all the members of the Seimas that has submitted the draft law for consideration submit a new and substantially changed draft law amending the Constitution.

The substantive limitations on the alteration of the Constitution; the provisions of the Constitution that may not be denied (for more on the requirements for the alteration of the Constitution by referendum, see 2. The constitutional status of persons, 2.3. Political rights and freedoms, 2.3.2. The right to a referendum, the ruling of 11 July 2014)

The Constitutional Court's ruling of 11 July 2014

In its ruling of 24 January 2014, the Constitutional Court noted that, when introducing amendments to the Constitution, it is necessary to pay regard to the imperative that the Constitution is an integral act (Paragraph 1 of Article 6 of the Constitution); by means of amendments to the Constitution, the provisions of the Constitution or the values consolidated in those provisions may not be opposed against one another, *inter alia*, the legal regulation established in the chapters and articles of the Constitution and the constitutional legal regulation established in the constituent parts of the Constitution may not be opposed against each other; no amendment to the Constitution may create any such a new constitutional legal regulation under which a certain provision of the Constitution would deny or contradict another provision

of the Constitution and it would be impossible to interpret those provisions as in harmony one with another; the imperative stems from Paragraph 1 of Article 6 of the Constitution whereby no amendments to the Constitution may violate the harmony of the provisions of the Constitution or the harmony of the values consolidated in those provisions.

In its ruling of 24 January 2014, the Constitutional Court also held that the concept, nature, and purpose of the Constitution, the stability of the Constitution as a constitutional value, and the imperative of the harmony of the provisions of the Constitution imply, *inter alia*, substantive limitations on the alteration of the Constitution; the substantive limitations on the alteration of the Constitution are the limitations consolidated in the Constitution in relation to the adoption of constitutional amendments of certain content; these limitations stem from the overall constitutional legal regulation; and they are designed to defend the universal values upon which the Constitution, as supreme law and as a social contract, and the state, as the common good of all society, are based, as well as to protect the harmony of these values and the harmony of the provisions of the Constitution.

In the Constitutional Court's ruling of 24 January 2014, the following substantive limitations, stemming from the Constitution, on the alteration of the Constitution were defined:

- it is not permitted to make any such amendments to the Constitution that would deny at least one of the constitutional values that constitute the foundation of the State of Lithuania as the constitutionally consolidated common good of all society – the independence of the state, democracy, the republic, and the innate nature of human rights and freedoms, with the exception of the cases where Article 1 of the Constitution would be altered in the manner prescribed by Paragraph 1 of Article 148 of the Constitution, or Article 1 of the Constitutional Law on the State of Lithuania, which is a constituent part of the Constitution, would be altered in the manner prescribed by Article 2 of this law;

- it is not permitted to make any such amendments to the Constitution that would deny the provisions of the Constitutional Act on the Non-Alignment of the Republic of Lithuania to Post-Soviet Eastern Unions, with the exception of the cases where the respective provisions of this constitutional act would be altered in the same manner as provided for in Article 2 of the Constitutional Law on the State of Lithuania;

- as long as the constitutional foundations of membership of the Republic of Lithuania in the European Union, which are consolidated in Articles 1 and 2 of the Constitutional Act on Membership of the Republic of Lithuania in the European Union, are not annulled by referendum, it is not permitted to make any such amendments to the Constitution that would deny the obligations of the Republic of Lithuania arising from its membership in the European Union;

- it is not permitted to make any such amendments to the Constitution that would deny the international obligations of the Republic of Lithuania (*inter alia*, the obligations of the Republic of Lithuania arising from its membership in NATO, which is implied by the geopolitical orientation of the State of Lithuania) and, at the same time, would deny the constitutional principle of *pacta sunt servanda*, as long as the said international obligations are not renounced in accordance with the norms of international law;

- the Seimas is not permitted to make any such amendments to the Constitution that would deny the provisions of Chapter I “The State of Lithuania” and Chapter XIV “The Alteration of the Constitution” of the Constitution; it is also not permitted to introduce by referendum any such amendments to the Constitution that would, without respectively amending the provisions of Chapter I “The State of Lithuania” and Chapter XIV “The Alteration of the Constitution” of the Constitution, lay down the constitutional legal regulation contrary to the provisions of Chapters I and XIV of the Constitution.

It should be emphasised that the innate nature of human rights and freedoms, democracy, and the independence of the state are such constitutional values that constitute the foundation for the Constitution as a social contract, the foundation for the Nation's common life, which is based on the Constitution, and the foundation for the State of Lithuania itself. No one may deny the provisions of the Constitution consolidating these fundamental constitutional values, since doing so would amount to the denial of the essence of the Constitution itself. Therefore, even where regard is paid to the aforementioned limitations on the alteration of the Constitution, which stem from the Constitution itself, it is not permitted to adopt any such amendments to the Constitution that would destroy the innate nature of human rights and

freedoms, democracy, or the independence of the state; if the Constitution were interpreted in a different way, it would be understood as creating the preconditions for abolishing the restored “independent State of Lithuania, founded on democratic principles”, as proclaimed by the Act of Independence of Lithuania of 16 February 1918.

It should be noted that the aforementioned substantive limitations imposed on the alteration of the Constitution are equally applicable in the event of the alteration of the Constitution by referendum. ... the principle of the supremacy of the Constitution, *inter alia*, gives rise to the imperative according to which it is not permitted to put to a referendum any such possible decisions that would not comply with the requirements stemming from the Constitution. Thus, according to the Constitution, it is also not permitted to put to a referendum any such a draft amendment to the Constitution that disregards the substantive limitations set on the alteration of the Constitution. Otherwise, the preconditions would be created for denying the principle of the supremacy of the Constitution and for disregarding the imperative, stemming from Paragraph 1 of Article 6 of the Constitution, that no amendments to the Constitution may violate the harmony of the provisions of the Constitution and the harmony of the values consolidated in those provisions.

The procedure for amending the constitutional acts forming a constituent part of the Constitution

The Constitutional Court’s ruling of 30 July 2020

The procedure, explicitly and implicitly prescribed in the Constitution, for amending the constitutional acts specified in Article 150 of the Constitution, which are a constituent part of the Constitution, is different from the procedure, laid down in Paragraph 3 of Article 69 of the Constitution, for amending constitutional laws.

The procedure for amending the Constitutional Law on the State of Lithuania, which is a constituent part of the Constitution

The Constitutional Court’s ruling of 30 July 2020

As held by the Constitutional Court, Article 1 of the Constitutional Law on the State of Lithuania, which is a constituent part of the Constitution, stipulates that the statement “The State of Lithuania shall be an independent democratic republic”, i.e. the provision of Article 1 of the Constitution, is a fundamental principle of the state (decision of 19 December 2012).

Under Article 2 of the Constitutional Law on the State of Lithuania, the provision “The State of Lithuania shall be an independent democratic republic” of Article 1 of this constitutional law, as well as Article 1 of the Constitution, may be altered only by referendum if not less than 3/4 of the citizens of Lithuania with the electoral right vote in favour thereof, i.e. the alteration of the provisions of the Constitutional Law on the State of Lithuania is subject to greater protection than other provisions of the Constitution. However ... it is not permitted to adopt any such amendments to the Constitution that would abolish the innate nature of human rights and freedoms, democracy, or the independence of the state; if the Constitution were interpreted in a different way, it would be understood as creating the preconditions for abolishing the restored “independent State of Lithuania, founded on democratic principles”, as proclaimed by the Act of Independence of Lithuania of 16 February 1918. Therefore, it should be stressed that the provision “The State of Lithuania shall be an independent democratic republic” of Article 1 of the Constitutional Law on the State of Lithuania, as well as Article 1 of the Constitution, may not be altered in such a way as to deny the fundamental constitutional values – the independence of the state, democracy, or the innate nature of human rights and freedoms.

The procedure for amending the Constitutional Act on the Non-Alignment of the Republic of Lithuania to Post-Soviet Eastern Unions, which is a constituent part of the Constitution

The Constitutional Court's ruling of 30 July 2020

The Constitutional Court has held that the same procedure as provided for in Article 2 of the Constitutional Law on the State of Lithuania may be applied to altering the provisions of the Constitutional Act on the Non-Alignment of the Republic of Lithuania to Post-Soviet Eastern Unions, which is a constituent part of the Constitution (rulings of 11 July 2014 and 15 February 2019), i.e. these provisions may be altered only if not less than 3/4 of the citizens of Lithuania with the active electoral right vote in favour thereof (ruling of 11 July 2014).

It should be noted that such a procedure for altering the Constitutional Act on the Non-Alignment of the Republic of Lithuania to Post-Soviet Eastern Unions is determined by the special nature of its provisions. The Constitutional Court has held that, as it is clear from the preamble to this constitutional act, it was adopted by “invoking the 16 February 1918 and 11 March 1990 Acts on the Restoration of the Independent State of Lithuania and acting upon the will of the entire Nation, as expressed on 9 February 1991”, and that the basis of the provisions of this constitutional act is the same fundamental principle of the state that is based on the expression of the sovereign will of the People and is consolidated in Article 1 of the Constitutional Law on the State of Lithuania – the State of Lithuania is an independent democratic republic (ruling of 24 January 2014). Therefore, the provisions of the Constitutional Act on the Non-Alignment of the Republic of Lithuania to Post-Soviet Eastern Unions should have the same protection as the provision “The State of Lithuania shall be an independent democratic republic”, which is consolidated in Article 1 of the Constitution and Article 1 of the Constitutional Law on the State of Lithuania (rulings of 24 January 2014 and 11 July 2014).

The procedure for amending the Law on the Procedure for the Entry into Force of the Constitution of the Republic of Lithuania, which is a constituent part the Constitution

The Constitutional Court's ruling of 30 July 2020

Under Article 152 of the Constitution, the Law of 25 October 1992 on the Procedure for the Entry into Force of the Constitution of the Republic of Lithuania, which is a constituent part of the Constitution, is intended to regulate the procedure for the entry into force of the Constitution and its separate provisions.

According to Article 1 of this law, upon the entry into force of the Constitution, the Provisional Basic Law became null and void; since then, the Lithuanian national legal system has been created and developed only on the basis of the Constitution (*inter alia*, the rulings of 13 May 2005, 7 September 2010, and 15 March 2011). In the jurisprudence of the Constitutional Court, it is also noted that the provisions of the Law on the Procedure for the Entry into Force of the Constitution of the Republic of Lithuania are inseparably related to other provisions of the Constitution: the provisions contained in some articles of this law supplement other provisions of the Constitution, without which the former could not be implemented; other articles of this law specify the particularities related to implementing the provisions of the Constitution during the period when the state institutions provided for by the Constitution were in the course of establishment and when the legal regulation required by the Constitution was still in the process of creation (rulings of 29 October 2003 and 7 September 2010); the Law on the Procedure for the Entry into Force of the Constitution of the Republic of Lithuania consolidates the principle of the taking over of law (ruling of 14 February 1994) and the procedure for bringing in line the acts in force with the Constitution after the entry into force of the Constitution (decision of 5 July 1995).

Thus, the provisions of the Law on the Procedure for the Entry into Force of the Constitution of the Republic of Lithuania, with the exception of Article 5 thereof, consolidate the transitional constitutional regulation related to the entry into force and implementation of the provisions of the Constitution, i.e. the provisions of the Law on the Procedure for the Entry into Force of the Constitution of the Republic of Lithuania, with the exception of Article 5 thereof, are not of continuing validity and can no longer be

applied after they have been implemented (it should be mentioned that the provisions of Articles 1, 3, 4, and 6 to 8 of the Law on the Procedure for the Entry into Force of the Constitution of the Republic of Lithuania have already been implemented). In view of this, the provisions of the Law on the Procedure for the Entry into Force of the Constitution of the Republic of Lithuania, with the exception of Article 5 thereof, may not be altered.

It should be noted that Article 5 of the Law on the Procedure for the Entry into Force of the Constitution of the Republic of Lithuania, which contains the text of the oath of a member of the Seimas of the Republic of Lithuania, may be amended in accordance with the procedure, laid down in Chapter XIV of the Constitution, for amending the provisions of the Constitution.

The procedure for amending the Constitutional Act on Membership of the Republic of Lithuania in the European Union, which is a constituent part of the Constitution

The Constitutional Court's ruling of 30 July 2020

As held by the Constitutional Court, the provisions of Articles 1 and 2 of the Constitutional Act on Membership of the Republic of Lithuania in the European Union laid down the constitutional foundations of membership of the Republic of Lithuania in the European Union; if these constitutional foundations were not consolidated in the Constitution, the Republic of Lithuania could not be a full member of the European Union; these constitutional foundations of membership of the Republic of Lithuania in the European Union were consolidated in the Constitution by acting upon the will of the People, expressed in the referendum, that the Republic of Lithuania would be a member of the European Union (rulings of 24 January 2014 and 11 July 2014). In view of this, the Constitutional Court also held that the said foundations in themselves and the expression of the sovereign will of the People, as the source of these foundations, determine the requirement that the provisions of Articles 1 and 2 of the Constitutional Act on Membership of the Republic of Lithuania in the European Union be altered or repealed only by referendum (rulings of 24 January 2014 and 11 July 2014).

It should be noted that Articles 3 and 4 of the Constitutional Act on Membership of the Republic of Lithuania in the European Union may be altered in accordance with the procedure, laid down in Chapter XIV of the Constitution, for amending the provisions of the Constitution.

Laws amending the Constitution (amendments to the Constitution)

The Constitutional Court's ruling of 30 July 2020

Laws amending the Constitution are special acts of constitutional law: by means of them, amendments to the Constitution are incorporated into the text of the Constitution. As held by the Constitutional Court, amendments to the Constitution change the content of the provisions of the Constitution and the interrelations between these provisions; they can also change the balance of the values consolidated in the Constitution; amendments to some provisions of the Constitution can result in changes in the content of other provisions thereof, as well as in the content of the overall constitutional regulation (ruling of 24 January 2014). Therefore, laws amending the Constitution, which introduce amendments to the Constitution, i.e. alter the provisions of the Constitution and, at the same time, usually modify the overall constitutional regulation, have the force of the Constitution.

Laws amending the Constitution (amendments to the Constitution) must comply with the substantive and procedural limitations on the alteration of the Constitution

The Constitutional Court's ruling of 30 July 2020

... laws amending the Constitution (amendments to the Constitution) are not acts of a constituent nature, because they are adopted only in accordance with the rules laid down in the Constitution itself, which bind both the civil People and the representation (Seimas) of the People, established under the Constitution. As acts adopted either directly by the People or through their representation (Seimas), laws

amending the Constitution (amendments to the Constitution) must comply with the substantive and procedural limitations on the alteration of the Constitution, which arise from the Constitution. ...

The substantive limitations on the alteration of the Constitution

The Constitutional Court's ruling of 30 July 2020

The Constitutional Court has noted that the substantive limitations on the alteration of the Constitution are the limitations consolidated in the Constitution in relation to the adoption of constitutional amendments of certain content; the substantive limitations on the alteration of the Constitution stem from the overall constitutional regulation and they are designed to defend the universal values on which the Constitution, as supreme law and as a social contract, and the state, as the common good of all society, are based, as well as to protect the harmony of these values and the harmony of the provisions of the Constitution (rulings of 24 January 2014 and 11 July 2014).

In this context, the following substantive limitations on the alteration of the Constitution, which stem from the Constitution, should be mentioned:

- it is not permitted to adopt any such amendments to the Constitution that would abolish the innate nature of human rights and freedoms, democracy, or the independence of the state (ruling of 11 July 2014); this, *inter alia*, means that ... Article 1 of the Constitution, as well as the provision “The State of Lithuania shall be an independent democratic republic” of Article 1 of the Constitutional Law on the State of Lithuania, may not be amended in such a way as to deny the fundamental constitutional values – the independence of the state, democracy, or the innate nature of human rights and freedoms;

- it is not permitted to make any such amendments to the Constitution that would deny one of the constitutional values that constitute the foundation of the State of Lithuania as the constitutionally consolidated common good of all society – the republic, except in the case where Article 1 of the Constitution would be altered in the manner prescribed by Paragraph 1 of Article 148 of the Constitution, or Article 1 of the Constitutional Law on the State of Lithuania, which is a constituent part of the Constitution, would be altered in the manner prescribed by Article 2 of this law (rulings of 24 January 2014 and 11 July 2014);

- it is not permitted to make any such amendments to the Constitution that would deny the provisions of the Constitutional Act on the Non-Alignment of the Republic of Lithuania to Post-Soviet Eastern Unions, except in the case where the respective provisions of this constitutional act would be altered in accordance with the same procedure as provided for in Article 2 of the Constitutional Law on the State of Lithuania (rulings of 24 January 2014 and 11 July 2014);

- as long as the constitutional foundations of membership of the Republic of Lithuania in the European Union, which are consolidated in Articles 1 and 2 of the Constitutional Act on Membership of the Republic of Lithuania in the European Union, are not annulled by referendum, it is not permitted to make any such amendments to the Constitution that would deny the obligations of the Republic of Lithuania under its membership in the European Union (rulings of 24 January 2014 and 11 July 2014);

- it is not permitted to make any such amendments to the Constitution that would deny the international obligations of the Republic of Lithuania (*inter alia*, the obligations of the Republic of Lithuania under its membership in NATO, which is implied by the geopolitical orientation of the State of Lithuania) and, at the same time, would deny the constitutional principle of *pacta sunt servanda*, as long as the said international obligations are not renounced in accordance with the norms of international law (rulings of 24 January 2014 and 11 July 2014);

- the Seimas is not permitted to make any such amendments to the Constitution that would deny the provisions of Chapter I “The State of Lithuania” and Chapter XIV “The Alteration of the Constitution” of the Constitution; it is also not permitted to introduce by referendum any such amendments to the Constitution that would, without respectively amending the provisions of Chapter I “The State of Lithuania” and Chapter XIV “The Alteration of the Constitution” of the Constitution, establish the

constitutional regulation contrary to the provisions of Chapters I and XIV of the Constitution (rulings of 24 January 2014 and 11 July 2014).

... the provisions of the Law on the Procedure for the Entry into Force of the Constitution of the Republic of Lithuania, with the exception of Article 5 thereof, may not be altered, in view of the fact that they consolidate the transitional constitutional regulation related to the entry into force and implementation of the provisions of the Constitution.

The procedural limitations on the alteration of the Constitution

The Constitutional Court's ruling of 30 July 2020

The Constitutional Court has noted that the procedural limitations on the alteration of the Constitution are related to the special procedure for the alteration of the Constitution, which is provided for in the Constitution; under the Constitution, different procedures for amending constitutional law and ordinary law are established; the constitutionally consolidated special procedure for the alteration of the Constitution may not be equated with the adoption of laws (*inter alia*, constitutional laws) (ruling of 24 January 2014).

The procedures for submitting, deliberating, and adopting laws amending the Constitution are regulated by Chapter XIV “The Alteration of the Constitution”; the provisions of this chapter have greater protection – according to Paragraph 2 of Article 148 of the Constitution, they may be altered only by referendum (ruling of 24 January 2014).

Under Paragraph 2 of Article 147 of the Constitution, the Constitution may not be amended during a state of emergency or martial law; no such prohibition is established with respect to the adoption of laws (ruling of 24 January 2014), *inter alia*, the adoption or amendment of constitutional laws.

Under Paragraphs 1 and 2 of Article 148 of the Constitution, the powers of the Seimas to amend the Constitution are limited: the provisions of Article 1 of the Constitution, the other provisions of Chapter I “The State of Lithuania”, as well as the provisions of Chapter XIV “The Alteration of the Constitution”, may be altered only by referendum (ruling of 24 January 2014).

In addition ... the provisions of the Constitutional Law on the State of Lithuania, the Constitutional Act on the Non-Alignment of the Republic of Lithuania to Post-Soviet Eastern Unions, and the provisions of Articles 1 and 2 of the Constitutional Act on Membership of the Republic of Lithuania in the European Union can be altered only by referendum.

Paragraph 1 of Article 147 of the Constitution specifies the special subjects who have the right to submit a motion to alter or supplement the Constitution to the Seimas: a group of not less than 1/4 of all the members of the Seimas or not less than 300 000 voters; these subjects are, in principle, different from the subjects that, under Article 68 of the Constitution, have the legislative initiative to adopt laws – the members of the Seimas, the President of the Republic, the Government, and 50 000 citizens (ruling of 24 January 2014). ...

Paragraph 3 of Article 148 of the Constitution provides for the special procedure for adopting amendments to the Constitution at the Seimas: amendments to the Constitution must be considered and voted on by the Seimas twice; there must be a break of not less than three months between the votes; no such requirement that laws must be considered and voted on by the Seimas twice is established in the Constitution with respect to the adoption of laws (ruling of 24 January 2014). ...

Paragraph 3 of Article 148 of the Constitution establishes the requirement of a special qualified majority vote of the members of the Seimas in order to adopt a law amending the Constitution: a draft law on the alteration of the Constitution is deemed adopted by the Seimas if, during each of the votes, not less than 2/3 of all the members of the Seimas vote in favour thereof; no such requirement of a special qualified majority of votes is established with respect to the adoption of laws: according to Article 69 of the Constitution, laws are deemed adopted if the majority of the members of the Seimas participating in the sitting vote in favour thereof (Paragraph 2); constitutional laws are adopted if more than half of all the members of the Seimas vote in favour thereof and they are altered by not less than a 3/5 majority vote of all the members of the Seimas (Paragraph 3) (ruling of 24 January 2014).

Paragraph 3 of Article 148 of the Constitution lays down a special limitation on submitting anew a failed constitutional amendment to the Seimas for reconsideration: it may be submitted to the Seimas not earlier than after one year; the Constitution contains no such limitation with respect to the adoption of laws (ruling of 24 January 2014). ...

Paragraphs 1 and 2 of Article 149 of the Constitution provide for a special procedure for promulgating a law amending the Constitution: the President of the Republic signs an adopted law on the alteration of the Constitution and officially promulgates it within 5 days; if the President of the Republic does not sign and promulgate such a law within the specified time, the Speaker of the Seimas signs and promulgates it (ruling of 24 January 2014).

It should be noted that, when the President of the Republic promulgates a law amending the Constitution, his/her powers are restricted to a greater extent than in the event of the promulgation of other laws (ruling of 24 January 2014): the Constitution does not provide that the President of the Republic has the right of a delaying veto over laws on the alteration of the Constitution (rulings of 19 June 2002 and 24 December 2002). Under Article 71 of the Constitution, the President of the Republic has the right of a delaying veto over laws, *inter alia*, constitutional laws, adopted by the Seimas: within ten days of receiving a law, *inter alia*, a constitutional law, adopted by the Seimas, the President of the Republic either signs and officially promulgates the law or, on reasonable grounds, refers it back to the Seimas for reconsideration (Paragraph 1); if a law, *inter alia*, a constitutional law, adopted by the Seimas is neither referred back nor signed by the President of the Republic within the specified period, such a law, *inter alia*, a constitutional law, comes into force after it is signed and officially promulgated by the Speaker of the Seimas (Paragraph 2).

Paragraph 3 of Article 149 of the Constitution provides for a special procedure for the entry into force of a law amending the Constitution: a law on the alteration of the Constitution comes into force not earlier than one month after its adoption; no such time limit for the entry into force of a law is established with respect to the entry into force of other laws adopted by the Seimas: under Paragraph 1 of Article 70 of the Constitution, laws adopted by the Seimas come into force after they are signed and officially promulgated by the President of the Republic, unless the laws themselves establish a later date for their entry into force (ruling of 24 January 2014). Thus, constitutional laws adopted by the Seimas come into force in accordance with the procedure laid down in Paragraph 1 of Article 70 of the Constitution.

1.8.4.3. International and EU law

The Convention for the Protection of Human Rights and Fundamental Freedoms in the legal system of Lithuania

The Constitutional Court's conclusion of 24 January 1995

The Convention for the Protection of Human Rights and Fundamental Freedoms is a special source of international law, the purpose of which is different from that of numerous other acts of international law. This purpose is universal, i.e. to strive for universal and effective recognition of the rights declared in the Universal Declaration of Human Rights and to achieve the observance of the said rights in the protection and further implementation of human rights and fundamental freedoms. With respect to its purpose, the Convention performs the same function as the constitutional guarantees for human rights, because the Constitution consolidates those guarantees in this country, whereas the Convention provides for such guarantees on the international level. ...

[...]

The legal system of the Republic of Lithuania is based on the fact that any law or other legal act, as well as any international treaty of the Republic of Lithuania (in this case, the Convention), may not be in conflict with the Constitution. Otherwise, the Republic of Lithuania would not be able to ensure the legal protection of the rights and freedoms recognised under the Convention

[...]

Paragraph 3 of Article 138 of the Constitution prescribes: “International treaties ratified by the Seimas of the Republic of Lithuania shall be a constituent part of the legal system of the Republic of Lithuania.” With respect to the Convention, this constitutional provision implies that, after it is ratified and comes into force, the Convention will become a constituent part of the legal system of the Republic of Lithuania and will be applied in the same way as the laws of the Republic of Lithuania. In the system of legal sources of the Republic of Lithuania, the provisions of the Convention are equalled to laws ...

... Paragraph 1 of Article 7 of the Constitution prescribes: “Any law or other act that contradicts the Constitution shall be invalid.” Although this constitutional provision in itself cannot render an international treaty, the Convention in this case, invalid, but it requires the compliance of the provisions of an international treaty with the constitutional provisions, because, otherwise, it would be problematic to implement the Convention in the domestic law of the Republic of Lithuania.

Ensuring the fulfilment of the international obligations of the state; the legal force of international treaties in the legal system of Lithuania (Paragraph 3 of Article 138 of the Constitution)

The Constitutional Court’s ruling of 17 October 1995

The legal system of the Republic of Lithuania is based on the fact that any law or other legal act, as well as any international treaty of the Republic of Lithuania, may not be in conflict with the Constitution, since Paragraph 1 of Article 7 of the Constitution prescribes: “Any law or other act that contradicts the Constitution shall be invalid.” As such, this constitutional provision cannot render any law or international treaty invalid, but it requires that the provisions of laws and international treaties be not in conflict with the provisions of the Constitution. Otherwise, the Republic of Lithuania would not be able to ensure the legal protection of the rights of the parties of international treaties, which arise from those treaties, and this would in turn hinder the fulfilment of the obligations according to the concluded international treaties. ... it is important that a consistent procedure for concluding, executing, and terminating international treaties would be established and that it would be in conformity with the provisions of the Constitution concerning international treaties ...

[...]

Paragraph 3 of Article 138 of the Constitution prescribes: “International treaties ratified by the Seimas of the Republic of Lithuania shall be a constituent part of the legal system of the Republic of Lithuania” ...

[...]

... [The Constitutional Court’s conclusion] of 24 January 1995 ... noted the following: “With respect to the Convention, this constitutional provision implies that, after it is ratified and comes into force, the Convention will become a constituent part of the legal system of the Republic of Lithuania and will be applied in the same way as the laws of the Republic of Lithuania.” The same applies not only to the said Convention, but also to all ratified international treaties of the Republic of Lithuania ...

... Only one type of international treaties is mentioned in Article 138 of the Constitution, i.e. treaties ratified by the Seimas Under the Constitution, only the legislature may decide by way of ratification which act of international law is a constituent part of the legal system of the Republic of Lithuania and has the legal force of a law. The Seimas has the right to adopt laws and the adoption of laws may not be delegated to any other institution of state power. The recognition that non-ratified international treaties have the legal force of a law would lead to the denial of the prerogative of the Seimas to pass laws.

The State of Lithuania recognises the principles and norms of international law (Paragraph 1 of Article 135 and Paragraph 3 of Article 138 of the Constitution)

The Constitutional Court’s ruling of 9 December 1998

Paragraph 1 of Article 135 of the Constitution states that, in implementing its foreign policy, the Republic of Lithuania follows the universally recognised principles and norms of international law, seeks to ensure national security and independence, the welfare of its citizens and their fundamental rights and freedoms, and contributes to the international order based on law and justice.

Paragraph 3 of Article 138 of the Constitution provides that international treaties ratified by the Seimas of the Republic of Lithuania are a constituent part of the legal system of the Republic of Lithuania.

In the context of interpreting these articles of the Constitution, it needs to be noted that the State of Lithuania, while recognising the principles and norms of international law, may not apply essentially different standards to the people of this country. Regarding itself as a full member of the international community, the State of Lithuania, of its own free will, adopts and recognises these principles and norms, the customs of the international community, naturally integrates itself into the world culture, and becomes its natural part.

The jurisprudence of the European Court of Human Rights as a source for the interpretation of law

The Constitutional Court's ruling of 29 December 2004

In its rulings, the Constitutional Court has held on more than one occasion that the jurisprudence of the European Court of Human Rights, as a source for the interpretation of law, is also important for the interpretation and application of Lithuanian law.

The legal force of international treaties in the legal system of Lithuania (Paragraph 1 of Article 135 and Paragraph 3 of Article 138 of the Constitution)

The Constitutional Court's ruling of 14 March 2006

... under Paragraph 3 of Article 138 of the Constitution, international treaties ratified by the Seimas are a constituent part of the legal system of the Republic of Lithuania.

Under Paragraph 1 of Article 135 of the Constitution, in implementing its foreign policy, the Republic of Lithuania follows the universally recognised principles and norms of international law, seeks to ensure national security and independence, the welfare of its citizens and their fundamental rights and freedoms, and contributes to the creation of the international order based on law and justice.

It also needs to be mentioned that the adherence of the State of Lithuania to the universally recognised principles of international law was declared in the Act of the Supreme Council of the Republic of Lithuania on the Re-establishment of the Independent State of Lithuania, which was adopted on 11 March 1990. Consequently, the observance of international obligations undertaken of its own free will and respect for the universally recognised principles of international law (as well as the principle of *pacta sunt servanda*) are a legal tradition and a constitutional principle of the restored independent State of Lithuania.

It needs to be noted that the Constitutional Court has held that the international treaties ratified by the Seimas acquire the legal force of a law (conclusion of 24 January 1995, the ruling of 17 October 1995, and the decisions of 25 April 2002 and 7 April 2004).

This doctrinal provision cannot be interpreted as meaning that it is permitted for the Republic of Lithuania not to observe its international treaties where its laws or constitutional laws establish a different legal regulation if compared with that established in the international treaties. On the contrary, the principle consolidated in the Constitution that the Republic of Lithuania observes international obligations undertaken of its own free will and respects the universally recognised principles of international law implies that, in cases where national legal acts (*inter alia*, laws or constitutional laws) establish such a legal regulation that competes with the one established in an international treaty, the international treaty is to be applied.

The legal force of EU legislative acts in the legal system of Lithuania (Paragraph 2 of the Constitutional Act on Membership of the Republic of Lithuania in the European Union)

The Constitutional Court's ruling of 14 March 2006

Under Paragraph 2 of the Constitutional Act on Membership of the Republic of Lithuania in the European Union, the norms of European Union law are a constituent part of the legal system of the Republic of Lithuania; where it concerns the founding Treaties of the European Union, the norms of European Union

law are applied directly, while in the event of the collision of legal norms, they have supremacy over the laws and other legal acts of the Republic of Lithuania.

Thus, the Constitution consolidates not only the principle that, in cases where national legal acts establish such a legal regulation that competes with that established in an international treaty, the international treaty must be applied, but also *expressis verbis* establishes the collision rule concerning EU law, consolidating the priority of the application of EU legislative acts in cases where the provisions of EU law arising from the founding Treaties of the European Union compete with the legal regulation established in Lithuanian national legal acts (regardless of their legal force), with the exception of the Constitution itself.

The jurisprudence of the Court of Justice of the European Union as a source for the interpretation of law

The Constitutional Court's ruling of 21 June 2011

... the jurisprudence of the Court of Justice of the European Union, as a source for the interpretation of law, is also important for the interpretation and application of Lithuanian law (rulings of 21 December 2006, 15 May 2007, 4 December 2008, and 27 March 2009).

The harmonisation of international and domestic law; the legal force of international treaties (*inter alia*, the Convention for the Protection of Human Rights and Fundamental Freedoms and its protocols) in the legal system of Lithuania; the jurisprudence of the European Court of Human Rights as a source for the interpretation of law; the State of Lithuania recognises the principles and norms of international law (Paragraph 1 of Article 7, Paragraph 1 of Article 135, and Paragraph 3 of Article 138 of the Constitution)

The Constitutional Court's ruling of 5 September 2012

The Convention and some of its protocols, *inter alia*, Protocol No 1, are international treaties of the Republic of Lithuania, which were ratified by the Seimas and came into force ...

... the Convention and its protocols were drafted, *inter alia*, on the grounds of the principle of the sovereign equality of states; the Convention system of human rights protection is subsidiary to the national legal systems.

In this context, it needs to be noted that the main responsibility for the effective implementation of the Convention and its protocols falls on the states, the parties to the Convention and its protocols; therefore, they have a broad discretion to choose the ways and measures for the application and implementation of the Convention and its protocols, *inter alia*, the execution of judgments delivered by the European Court of Human Rights. However, such discretion is limited by the particularities (related to the established system of the harmonisation of national (domestic) and international law) of the legal systems of states, *inter alia*, their constitutions, as well as by the nature of the human rights and freedoms guaranteed under the Convention and its protocols ...

[...]

... the European Court of Human Rights has a subsidiary role in the implementation of the Convention and its protocols; it does not replace the competence and jurisdiction of national courts, nor is it an appeal or cassation instance with regard to judgments of the latter. Even though the jurisprudence of the European Court of Human Rights, as a source for the interpretation of law, is also important for the interpretation and application of Lithuanian law, the jurisdiction of the European Court of Human Rights does not replace the powers of the Constitutional Court to officially interpret the Constitution.

... in Lithuania, the system of parallel harmonisation of international and domestic law is applied, which is based on the rule that international treaties are transformed in the legal system of the country (i.e. they are incorporated into it) (rulings of 17 October 1995 and 18 December 1997). Under Paragraph 3 of Article 138 of the Constitution, international treaties ratified by the Seimas are a constituent part of the legal system of the Republic of Lithuania. Interpreting this provision of the Constitution, the Constitutional

Court has held that it means that international treaties ratified by the Seimas acquire the legal force of a law (conclusion of 24 January 1995, the rulings of 17 October 1995 and 14 March 2006, and the decisions of 25 April 2002 and 7 April 2004). Thus, in the legal system of Lithuania, the Convention has the legal force of a law (ruling of 16 January 2007). Protocol No 1 to the Convention also has the legal force of a law.

It also needs to be noted that, as held by the Constitutional Court, the doctrinal provision that international treaties ratified by the Seimas acquire the legal force of a law cannot be interpreted as meaning that it is permitted for the Republic of Lithuania not to observe its international treaties where its laws or constitutional laws establish a different legal regulation if compared with that established in the international treaties (ruling of 14 March 2006). In addition, the Constitution consolidates the principle that, in cases where a national legal act (except the Constitution itself) establishes such a legal regulation that competes with that established in an international treaty, the international treaty is to be applied (rulings of 14 March 2006 and 21 December 2006). Thus, in cases where the legal regulation consolidated in an international treaty ratified by the Seimas competes with the legal regulation established in the Constitution, the application of the provisions of such an international treaty does not take priority.

Consequently, when the international obligations of the Republic of Lithuania are implemented in domestic law, account must be taken of the principle of the supremacy of the Constitution, which is consolidated in Paragraph 1 of Article 7 thereof. As emphasised by the Constitutional Court, the legal system of the Republic of Lithuania is based on the fact that any law or other legal act, as well as international treaties of the Republic of Lithuania, may not be in conflict the Constitution, since Paragraph 1 of Article 7 of the Constitution prescribes: “Any law or other act that contradicts the Constitution shall be invalid.” As such, this constitutional provision cannot render any law or international treaty invalid, but it requires that the provisions of laws and international treaties be not in conflict with the provisions of the Constitution (conclusion of 24 January 1995 and the ruling of 17 October 1995); otherwise, the Republic of Lithuania would not be able to ensure the legal protection of the rights of the parties of international treaties, which arise from those treaties, and this would, in its turn, hinder the fulfilment of the obligations under the concluded international treaties (ruling of 17 October 1995). This also applies to the Convention (and its protocols); otherwise, the Republic of Lithuania would not be able to ensure the legal protection of the rights and freedoms recognised under the Convention (conclusion of 24 January 1995).

[...]

... as such, a judgment of the European Court of Human Rights may not serve as the constitutional grounds for the reinterpretation (modification) of the official constitutional doctrine (provisions thereof) in cases where such reinterpretation, in the absence of the respective amendments to the Constitution, would change the overall constitutional legal regulation ... in substance, also where it would disturb the system of the values consolidated in the Constitution and would diminish the guarantees of the protection of the supremacy of the Constitution in the legal system.

On the other hand, it needs to be emphasised that respect for international law, i.e. the observance of international obligations undertaken by the Republic of Lithuania of its own free will and respect for the universally recognised principles of international law (as well as the principle of *pacta sunt servanda*) are a legal tradition and a constitutional principle of the restored independent State of Lithuania (ruling of 14 March 2006). The Republic of Lithuania must follow the universally recognised principles and norms of international law, *inter alia*, under Paragraph 1 of Article 135 of the Constitution.

The legal force of international treaties in the legal system of Lithuania; the duty of the state to remove incompatibilities between an international treaty and the provisions of the Constitution (Paragraph 1 of Article 7, Paragraph 1 of Article 135, and Paragraph 3 of Article 138 of the Constitution)

The Constitutional Court's ruling of 18 March 2014

... under Paragraph 3 of Article 138 of the Constitution, international treaties ratified by the Seimas are a constituent part of the legal system of the Republic of Lithuania. In this context, it should be noted

that the said provision should be interpreted in the light of the principle of the supremacy of the Constitution. As the Constitutional Court emphasised in its rulings of 25 May 2004 and 24 January 2014, the Constitution is supreme law.

As held by the Constitutional Court on more than one occasion, international treaties ratified by the Seimas acquire the legal force of a law. It should also be noted that the doctrinal provision that international treaties ratified by the Seimas acquire the legal force of a law may not be interpreted as meaning that, purportedly, it is permitted for the Republic of Lithuania not to observe its international treaties where its laws or constitutional laws establish a different legal regulation if compared with that established under international treaties (rulings of 14 March 2006 and 5 September 2012). The Constitution also consolidates the principle that, in cases where a national legal act (obviously, with the exception of the Constitution itself) establishes such a legal regulation that competes with that established in an international treaty, the international treaty must be applied (rulings of 14 March 2006, 21 December 2006, and 5 September 2012). Thus, in those cases where the legal regulation consolidated in an international treaty that has been ratified by the Seimas and has come into force competes with the legal regulation established in the Constitution, the application of the provisions of such an international treaty does not take priority (ruling of 5 September 2012).

As the Constitutional Court noted in its ruling of 5 September 2012, in the course of implementing, in domestic law, the international obligations of the Republic of Lithuania, it is necessary to take account of the principle of the supremacy of the Constitution, which is consolidated in Paragraph 1 of Article 7 of the Constitution; the legal system of the Republic of Lithuania is based on the fact that any law or other legal act, as well as any international treaty of the Republic of Lithuania, may not be in conflict with the Constitution, since Paragraph 1 of Article 7 of the Constitution prescribes: “Any law or other act that contradicts the Constitution shall be invalid”; this constitutional provision cannot in itself render any law or international treaty invalid, but it requires that the provisions of laws and international treaties be not in conflict with the provisions of the Constitution; otherwise, the Republic of Lithuania would not be able to ensure the legal protection of the rights of the parties of international treaties, which arise from those treaties, and this would, in its turn, hinder the fulfilment of the obligations under the concluded international treaties.

On the other hand ... under Paragraph 1 of Article 135 of the Constitution, the Republic of Lithuania is obliged to follow the universally recognised principles and norms of international law; the constitutional principle of *pacta sunt servanda*, which is consolidated in the said provision, means the imperative of fulfilling, in good faith, the obligations assumed by the Republic of Lithuania under international law, *inter alia*, international treaties. In view of this, it should be noted that, in the event of an incompatibility between an international treaty of the Republic of Lithuania and the provisions of the Constitution, the duty arises, under Paragraph 1 of Article 135 of the Constitution, for the Republic of Lithuania to remove the said incompatibility, *inter alia*, either by renouncing the international obligations established under the international treaty in the manner prescribed by the norms of international law or by making the respective amendments to the Constitution.

EU law is a source of the interpretation of the law of the Republic of Lithuania, *inter alia*, the Constitution, in those areas in which the Republic of Lithuania shares with or confers on the European Union the competences of its state institutions (Article 1 of the Constitutional Act on Membership of the Republic of Lithuania in the European Union)

The Constitutional Court’s decision of 20 December 2017

... the constitutional imperative of the full participation of the Republic of Lithuania in the European Union also implies the constitutional obligation of the Republic of Lithuania to properly implement the requirements of European Union law. European Union law is a source of the interpretation of the law of the Republic of Lithuania, *inter alia*, the Constitution, in those areas in which, under Article 1 of the Constitutional Act on Membership of the Republic of Lithuania in the European Union, the Republic of Lithuania shares with or confers on the European Union the competences of its state institutions. ... there

are no grounds for interpreting the provisions of the Constitution linked to the areas [of shared competence between the European Union and the Member States] ... differently from the manner in which the specified areas are regulated under European Union law.

1.8.4.4. Constitutional laws

Constitutional laws and the procedure for their adoption and amendment (Paragraph 2 of Article 47 (wording of 20 June 1996) and Paragraph 3 of Article 69 of the Constitution)

The Constitutional Court's ruling of 24 December 2002

Paragraph 3 of Article 69 of the Constitution prescribes: "Constitutional laws of the Republic of Lithuania shall be adopted if more than half of all the Members of the Seimas vote in favour thereof, and they shall be altered by not less than a 3/5 majority vote of all the Members of the Seimas. The Seimas shall establish the list of constitutional laws by a 3/5 majority vote of the Members of the Seimas."

In its ruling of 2 April 2001, the Constitutional Court held that constitutional laws differ from other laws as regards the procedure for their adoption and amendment. The special place of constitutional laws in the system of legal acts is determined by the Constitution itself. Constitutional laws may not be amended or repealed by means of laws. Thus, it is ensured that the social relationships regulated by means of constitutional laws would not be regulated in a different manner and that the greater stability of the social relationships regulated by means of constitutional laws would be guaranteed. Constitutional laws may not be in conflict with the Constitution, and laws may not be in conflict with the Constitution and constitutional laws.

Thus, in the hierarchy of legal acts, constitutional laws have the legal force that is lower than that of the Constitution itself. A constitutional law may not limit the legal force of the Constitution or of its certain provisions; such a law may not lay down, *inter alia*, any such a legal regulation that would limit or deny the possibility of applying the Constitution directly.

In its ruling of 8 November 1993, when interpreting the legal regulation established in Paragraph 3 of Article 69 of the Constitution, the Constitutional Court held that, only after the list of constitutional laws is approved in accordance with the procedure laid down in the said paragraph, the laws included in the aforesaid list may be treated as constitutional laws, and the rule of their adoption by a qualified majority of votes (which is established in the Constitution) would have to be applied only to these laws. In the absence of such a list of constitutional laws, the aforesaid procedure for the adoption of constitutional laws may not be applied to the adoption of any law, except the adoption of the law establishing the list of constitutional laws.

Due to the fact that, under the Constitution, constitutional laws may not be altered or repealed by laws other than constitutional laws (i.e. constitutional laws may not be altered or repealed by ordinary laws) and due to the fact that laws may not be in conflict with the Constitution and constitutional laws, the list of constitutional laws may, under the Constitution, be established only by means of a constitutional law. According to Paragraph 3 of Article 69 of the Constitution, such a constitutional law must be adopted by a 3/5 majority vote of the members of the Seimas.

In its ruling of 22 December 1994, the Constitutional Court held that the Constitution does not prescribe another procedure for adopting constitutional laws, save the procedure established in Article 69 of the Constitution.

The constitutionally consolidated concept of constitutional laws changed after the adoption of the Republic of Lithuania's Law on Amending Article 47 of the Constitution ...

... in Paragraph 2 of Article 47 of the Constitution it is *expressis verbis* prescribed that certain relationships indicated in this paragraph of Article 47 are to be regulated by means of a constitutional law.

In its ruling of 2 April 2001, the Constitutional Court held that, under the Constitution, such laws that are directly referred to as constitutional laws in the Constitution and are adopted in accordance with the procedure established in Paragraph 3 of Article 69 of the Constitution, as well as such laws that are included

in the list of constitutional laws and are adopted in accordance with the procedure established in Paragraph 3 of Article 69 of the Constitution, are constitutional laws.

The fact that certain constitutional laws can be directly indicated in the Constitution implies the constitutional duty of the Seimas to adopt these constitutional laws by paying regard to the requirement, established in Paragraph 3 of Article 69 of the Constitution, that these constitutional laws may be adopted if more than half of all the members of the Seimas vote in favour thereof and that they may be altered by not less than a 3/5 majority vote of all the members of the Seimas.

... Under the Constitution, as long as the constitutional law establishing the list of constitutional laws is not adopted, the Seimas does not have any powers to adopt any constitutional law, unless such a constitutional law is indicated directly in the Constitution itself, or unless it is the constitutional law whereby the list of constitutional laws is established.

[...]

... the constitutional concept of constitutional laws implies that only the constitutional laws included in the list of constitutional laws, save those directly indicated in the Constitution itself and the constitutional law establishing the list of constitutional laws, may be treated as constitutional laws, and the adoption of only such laws may be subject to the rules established in Paragraph 3 of Article 69 of the Constitution.

The fundamental constitutional acts of the State of Lithuania cannot be equated with constitutional laws

The Constitutional Court's ruling of 30 July 2020

... the fundamental constitutional acts of the State of Lithuania – the Resolution of the Council of Lithuania of 16 February 1918 (Act of Independence), the Act of the Supreme Council of the Republic of Lithuania of 11 March 1990 on the Re-establishment of the Independent State of Lithuania, and the Declaration of the Council of the Lithuanian Freedom Fight Movement of 16 February 1949 – are not constitutional laws and cannot be equated with them.

The constitutional acts forming a constituent part of the Constitution cannot be equated with constitutional laws

The Constitutional Court's ruling of 30 July 2020

The constitutional acts indicated in Article 150 of the Constitution are not constitutional laws and cannot be equated with them ...

Laws amending the Constitution (amendments to the Constitution) cannot be equated with constitutional laws

The Constitutional Court's ruling of 30 July 2020

... under the Constitution, laws amending the Constitution (constitutional amendments) are not constitutional laws and cannot be equated with them ...

Constitutional laws are not a constituent part of the Constitution

The Constitutional Court's ruling of 30 July 2020

... under the Constitution, constitutional laws are not its constituent part. ...

Constitutional laws in the system of legal acts; the legal force of constitutional laws

The Constitutional Court's ruling of 30 July 2020

The special place of constitutional laws in the system of legal acts is determined by the Constitution itself (rulings of 2 April 2001, 24 December 2002, and 14 March 2006). ... in the hierarchy of legal acts, constitutional laws have the legal force that is lower than that of the Constitution itself. A constitutional law may not limit the legal force of the Constitution or the legal force of its certain provisions; a constitutional law, *inter alia*, may not lay down any such a legal regulation that would limit or deny the

possibility of applying the Constitution directly (ruling of 24 December 2002). Constitutional laws may not be in conflict with the Constitution, and laws may not be in conflict with the Constitution and constitutional laws ...

Thus, under the Constitution, constitutional laws have the legal force that is lower than that of the Constitution but higher than that of laws. It should be noted that, under the Constitution, all constitutional laws adopted in accordance with the procedure laid down in Paragraph 3 of Article 69 of the Constitution, regardless of whether they are the constitutional laws directly specified in the Constitution or the constitutional laws included in the list of constitutional laws, have equal legal force; the constitutional law establishing the list of constitutional laws has the same legal force.

Constitutional laws may not contradict the constitutional acts forming a constituent part of the Constitution

The Constitutional Court's ruling of 30 July 2020

... constitutional laws adopted in accordance with the procedure laid down in Paragraph 3 of Article 69 of the Constitution may not contradict, *inter alia*, the Constitutional Law of 11 February 1991 on the State of Lithuania, the Constitutional Act of 8 June 1992 on the Non-Alignment of the Republic of Lithuania to Post-Soviet Eastern Unions, the Law of 25 October 1992 on the Procedure for the Entry into Force of the Constitution of the Republic of Lithuania, and the Constitutional Act of 13 July 2004 on Membership of the Republic of Lithuania in the European Union, which all are a constituent part of the Constitution under Article 150 thereof.

Constitutional laws must regulate particularly significant issues in the life of the state and society

The Constitutional Court's ruling of 30 July 2020

... the Constitution does not directly establish which criteria the Seimas should follow when including concrete constitutional laws in the list of constitutional laws, which is adopted under Paragraph 3 of Article 69 of the Constitution. However, the Constitution, *inter alia*, the provisions of Paragraph 3 of Article 69 and Paragraph 2 of Article 72 thereof, which lay down a more complex procedure for adopting and amending constitutional laws, makes it clear that constitutional laws should govern the constitutionally important areas of social relationships and particularly significant issues in the life of the state and society.

Constitutional laws and the procedure for their adoption and amendment

The Constitutional Court's ruling of 30 July 2020

Article 69 of the Constitution prescribes:

“Laws shall be adopted at the Seimas according to the procedure established by law.

Laws shall be deemed adopted if the majority of the Members of the Seimas participating in the sitting vote in favour thereof.

Constitutional laws of the Republic of Lithuania shall be adopted if more than half of all the Members of the Seimas vote in favour thereof, and they shall be altered by not less than a 3/5 majority vote of all the Members of the Seimas. The Seimas shall establish the list of constitutional laws by a 3/5 majority vote of the Members of the Seimas.

The provisions of laws of the Republic of Lithuania may also be adopted by referendum.”

Thus, Paragraph 3 of Article 69 of the Constitution provides for the institution of constitutional laws, as well as for the procedure for adopting and amending constitutional laws, which is different from the procedure, provided for in Paragraph 2 of this article, for adopting laws. It should be noted that constitutional laws are *expressis verbis* also mentioned in other provisions of the Constitution, *inter alia*, in Articles 47 and 72 of the Constitution.

[...]

Interpreting these provisions of the Constitution, the Constitutional Court has held that, under the Constitution, constitutional laws are: (1) constitutional laws directly specified in the Constitution and adopted in accordance with the procedure laid down in Paragraph 3 of Article 69 of the Constitution;

(2) constitutional laws included in the list of constitutional laws and adopted in accordance with the procedure laid down in Paragraph 3 of Article 69 of the Constitution (rulings of 2 April 2001, 24 December 2002, and 14 March 2006).

It should be noted that a constitutional law is directly specified in Paragraph 3 of Article 47 (wording of 23 January 2003) of the Constitution, which stipulates the following: “In the Republic of Lithuania, foreign entities may acquire the ownership of land, internal waters, and forests according to a constitutional law.” Thus, Paragraph 3 of Article 47 (wording of 23 January 2003) of the Constitution *expressis verbis* provides that certain social relationships indicated in this paragraph are to be regulated by means of a constitutional law (ruling of 24 December 2002).

As held by the Constitutional Court, the fact that certain constitutional laws can be directly indicated in the Constitution implies the constitutional duty of the Seimas to adopt these constitutional laws by paying regard to the requirements, established in Paragraph 3 of Article 69 of the Constitution, that these constitutional laws may be adopted if more than half of all the members of the Seimas vote in favour thereof and that they may be altered by not less than a 3/5 majority vote of all the members of the Seimas (rulings of 24 December 2002 and 14 March 2006).

The constitutional law establishing the list of constitutional laws; the list of constitutional laws

The Constitutional Court's ruling of 30 July 2020

... the provision “The Seimas shall establish the list of constitutional laws by a 3/5 majority vote of the Members of the Seimas” of Paragraph 3 of Article 69 of the Constitution implies that the list of constitutional laws must be established by means of a constitutional law. As held by the Constitutional Court, given that, under the Constitution, constitutional laws may not be altered or repealed by means of laws other than constitutional (i.e. they may not be altered or repealed by means of ordinary laws) and, given that laws may not be in conflict with the Constitution and constitutional laws, the list of constitutional laws may, under the Constitution, be established only by means of a constitutional law (ruling of 24 December 2002).

... such a constitutional law must be adopted by a 3/5 majority vote of the members of the Seimas (ruling of 24 December 2002). Therefore, under Paragraph 3 of Article 69 of the Constitution, the constitutional law establishing the list of constitutional laws must be adopted by a higher majority vote of the members of the Seimas than other constitutional laws. Such a higher majority vote of the members of the Seimas for adopting the constitutional law establishing the list of constitutional laws is prescribed in Paragraph 3 of Article 69 of the Constitution in view of the special significance of this constitutional law. As held by the Constitutional Court, the inclusion of a law in the list of constitutional laws, under the Constitution, means that such a law must be adopted and the legal regulation laid down therein must be amended under a more complex procedure (compared with the procedure for adopting and amending other laws), thereby seeking to create the preconditions for ensuring the stability of this legal regulation (ruling of 15 February 2019); thus, in this way, it is ensured that the social relationships governed by means of constitutional laws will not be regulated by laws in a different manner and that the greater stability of the social relationships governed by means of constitutional laws will be guaranteed (rulings of 2 April 2001, 24 December 2002, and 14 March 2006).

The Constitutional Court has also held that, only after the list of constitutional laws is approved in accordance with the procedure laid down in Paragraph 3 of Article 69 of the Constitution, the laws included in this list may be treated as constitutional laws, and only these laws must be subject to the procedure established in the Constitution for their adoption and amendment (rulings of 8 November 1993 and 22 December 1994); under the Constitution, as long as the constitutional law establishing the list of constitutional laws is not adopted, the Seimas has no powers to adopt any constitutional law, unless such a constitutional law is directly indicated in the Constitution itself or it is the constitutional law whereby the list of constitutional laws is established (ruling of 24 December 2002).

Thus, the constitutional concept of constitutional laws implies that only the constitutional laws included in the list of constitutional laws, except those directly indicated in the Constitution itself and the

constitutional law establishing the list of constitutional laws, may be treated as constitutional laws and the adoption of only these laws may be subject to the rules laid down in Paragraph 3 of Article 69 of the Constitution (ruling of 24 December 2002). If a law is not included in the list of constitutional laws, the procedure for adopting constitutional laws, as defined in Paragraph 3 of Article 69 of the Constitution, may not be applied to its adoption (ruling of 18 October 2000); amendments and supplements to an ordinary law may not be adopted according to the rules for adopting constitutional laws (ruling of 8 November 1993).

In view of this, it should be noted that, under Paragraph 3 of Article 69 of the Constitution, the constitutional law establishing the list of constitutional laws is not an objective in itself: it establishes a list of laws governing those social relationships with respect to which greater stability should be ensured compared with social relationships to be governed by ordinary laws.

The duty of the Seimas to adopt the constitutional laws included in the list of constitutional laws

The Constitutional Court's ruling of 30 July 2020

It should be emphasised that, according to Paragraph 3 of Article 69 of the Constitution, the list of constitutional laws may not be meaningless. As mentioned before, the inclusion of a law in the list of constitutional laws, under the Constitution, means that, in this way, it is ensured that the social relationships governed by means of constitutional laws will not be regulated by laws in a different manner and that the greater stability of the social relationships governed by means of constitutional laws will be guaranteed.

In this context, it should be noted that, as held by the Constitutional Court more than once, when, under the Constitution, the Seimas adopts laws, it is bound not only by the Constitution, but also by laws adopted by itself; this is an essential element of the constitutional principle of a state under the rule of law (*inter alia*, the rulings of 11 July 2002, 24 September 2009, and 1 July 2013).

Thus, according to Paragraph 3 of Article 69 of the Constitution, interpreted in the context of the constitutional principle of a state under the rule of law, the constitutional law establishing the list of constitutional laws, when adopted by the Seimas, implies the obligation of the Seimas to adopt the constitutional laws specified in this constitutional law, i.e. to regulate the respective social relationships by means of constitutional laws. In other words, upon the adoption by the Seimas of the constitutional law establishing the list of constitutional laws in accordance with Paragraph 3 of Article 69 of the Constitution, i.e. after the Seimas decides by a 3/5 majority vote of the members of the Seimas what social relationships, due to their particular importance and the need to ensure the greater stability of their regulation, should be regulated by constitutional laws, these social relationships may not be governed by means of lower-ranking legal acts – laws and substatutory legal acts. However, this does not mean that, under the Constitution, the Seimas may not adopt laws designed for implementing constitutional laws, or that substatutory legal acts may not specify in detail the general rules laid down in constitutional laws.

In this context, it should be noted that Paragraph 3 of Article 69 of the Constitution does not stipulate when the Seimas must adopt the constitutional laws included in the list of constitutional laws.

As mentioned before, under the Constitution, constitutional laws are those laws that are included in the list of constitutional laws and are adopted in accordance with the procedure laid down in Paragraph 3 of Article 69 of the Constitution. Therefore, under the Constitution, the mere fact that a constitutional law, which must regulate certain social relationships governed until then by means of an ordinary law, is included in the list of constitutional laws does not mean that the ordinary law governing those social relationships naturally becomes a constitutional law as a result of the inclusion of the constitutional law that will regulate those relationships in the list of constitutional laws. Thus, under the Constitution, upon the adoption of the constitutional law establishing the list of constitutional laws, the Seimas has the duty to adopt, in accordance with the procedure laid down in Paragraph 3 of Article 69 of the Constitution, *inter alia*, the constitutional laws included in this list, which would regulate social relationships governed by means of ordinary laws prior to the adoption of the constitutional law establishing the list of constitutional laws.

It should also be noted that, under the Constitution, as long as a constitutional law included in the list of constitutional laws is not adopted in accordance with the procedure laid down in Paragraph 3 of Article 69 of the Constitution, the ordinary law governing those social relationships is in force; such an ordinary law may be amended by the Seimas in accordance with the procedure laid down in Paragraph 2 of Article 69 of the Constitution. However, such discretion of the Seimas is bound by the above-mentioned obligation of the Seimas, stemming from Paragraph 3 of Article 69 of the Constitution, interpreted in the context of the constitutional principle of a state under the rule of law, upon the adoption of the constitutional law establishing the list of constitutional laws, also to adopt the constitutional laws specified therein, i.e. to regulate the respective social relationships by means of constitutional laws. In view of this ... under the Constitution, in cases where the Seimas decides to establish a new overall legal regulation of the respective social relationships that are governed by an ordinary law but, according to the constitutional law establishing the list of constitutional laws, must be regulated by means of a constitutional law, such a new overall legal regulation, under Paragraph 3 of Article 69 of the Constitution, must be established by means of a constitutional law. If Paragraph 3 of Article 69 of the Constitution were interpreted differently, i.e. that, purportedly, the Seimas has unlimited discretion to adopt the constitutional laws included in the list of constitutional laws at any time, the list of constitutional laws, in the same way as the above-mentioned obligation of the Seimas, stemming from Paragraph 3 of Article 69 of the Constitution, interpreted in the context of the constitutional principle of a state under the rule of law, to adopt the constitutional laws specified in this constitutional law, would be meaningless.

The procedure for the adoption and amendment of constitutional laws

The Constitutional Court's ruling of 30 July 2020

In the jurisprudence of the Constitutional Court, it is noted that constitutional laws differ from other laws primarily in terms of the procedure for their adoption and amendment (ruling of 2 April 2001); the procedure for adopting and amending constitutional laws is related to their special place in the legal system and the specific relations between the norms of constitutional laws and constitutional norms (ruling of 1 December 1994).

... the subjects that are specified in Article 68 of the Constitution and have the right of the legislative initiative to adopt laws – members of the Seimas, the President of the Republic, the Government, and 50 000 citizens – have the right of the legislative initiative to adopt constitutional laws. However ... under Paragraph 3 of Article 69 of the Constitution, constitutional laws, except for the constitutional law establishing the list of constitutional laws, are adopted if more than half of all the members of the Seimas vote in favour thereof; the constitutional law establishing the list of constitutional laws is adopted by a 3/5 majority vote of the members of the Seimas. Thus, the majority vote required under Paragraph 3 of Article 69 of the Constitution to adopt constitutional laws is higher than the majority vote – of the members of the Seimas participating in the sitting of the Seimas – required under Paragraph 2 of Article 69 of the Constitution to adopt ordinary laws.

Constitutional laws may not be altered or repealed by ordinary laws – under the Constitution, they may be altered only by means of constitutional laws (rulings of 2 April 2001 and 14 March 2006). Under Paragraph 3 of Article 69 of the Constitution, constitutional laws, *inter alia*, the constitutional law establishing the list of constitutional laws, are altered by not less than a 3/5 majority vote of all the members of the Seimas. Thus, the majority vote required under Paragraph 3 of Article 69 of the Constitution to alter constitutional laws is higher than the majority vote – of the members of the Seimas participating in the sitting of the Seimas – required under Paragraph 2 of Article 69 of the Constitution to amend ordinary laws.

Paragraph 1 of Article 71 of the Constitution prescribes that, within ten days of receiving a law adopted by the Seimas, the President of the Republic either signs and officially promulgates the law or, upon reasonable grounds, refers it back to the Seimas for reconsideration. ... under Paragraph 1 of Article 71 of the Constitution, the President of the Republic has the right of a delaying veto, *inter alia*, over constitutional laws. Paragraph 2 of Article 72 of the Constitution prescribes that “The law reconsidered by the Seimas shall be deemed adopted if the amendments and supplements submitted by the President of the Republic

are adopted, or if more than 1/2 of all the Members of the Seimas vote for the law, or, in cases where such a law is a constitutional law, if not less than 3/5 of all the Members of the Seimas vote in favour thereof”.

Thus, under Paragraph 2 of Article 72 of the Constitution, the Seimas may overturn a veto of the President of the Republic, *inter alia*, over constitutional laws. It should be noted that this paragraph provides for a higher majority vote of the members of the Seimas (not less than 3/5 of all the members of the Seimas) required to overturn a veto of the President of the Republic over constitutional laws, compared to the majority vote required to overturn a veto of the President of the Republic over ordinary laws, which are adopted and amended in accordance with the procedure laid down in Paragraph 2 of Article 69 of the Constitution. It should also be noted that such a higher majority vote of the members of the Seimas (not less than 3/5 of all the members of the Seimas) is necessary in order to overturn a veto of the President of the Republic in connection to both constitutional laws adopted by the Seimas in accordance with the procedure laid down in Paragraph 3 of Article 69 of the Constitution and constitutional laws amended by the Seimas in accordance with the procedure laid down in Paragraph 3 of Article 69 of the Constitution.

Constitutional laws, with the exception of the constitutional law establishing the list of constitutional laws, may be adopted and amended by referendum

The Constitutional Court's ruling of 30 July 2020

The Constitutional Court has held that, under the Constitution, the list of constitutional laws is established only by the Seimas (rulings of 1 December 1994 and 11 July 2014); the list of constitutional laws may not be adopted by referendum (ruling of 11 July 2014). However, this does not mean that the constitutional laws included in the list of constitutional laws in accordance with the Constitution, as well as the constitutional laws directly indicated in the Constitution, may not be adopted or amended by referendum. In other words, the above-mentioned requirement that constitutional laws, except the constitutional law establishing the list of constitutional laws, must be adopted and amended in accordance with the procedure established in Paragraph 3 of Article 69 of the Constitution, cannot be made absolute.

In this context, it should be noted that, under Paragraph 4 of Article 69 of the Constitution, the provisions of laws of the Republic of Lithuania may also be adopted by referendum. Interpreting this provision of the Constitution, the Constitutional Court has noted that the concept “the provisions of laws” used in the Constitution can be understood both as an integral law and as separate norms thereof (ruling of 22 July 1994). The Constitutional Court has held in its jurisprudence more than once that the Constitution may not be interpreted only literally, by applying the sole linguistic (verbal) method (*inter alia*, the rulings of 25 May 2004, 24 September 2009, and 27 February 2012); if the literal (linguistic, verbal) interpretation of the Constitution is made absolute, then, at the same time, the content of the overall constitutional legal regulation is downgraded and, if not all, then at least some values consolidated, defended, and protected by the Constitution are ignored, as well as the preconditions can be created for undermining the aspirations consolidated by the People in the Constitution, adopted by referendum (rulings of 6 June 2006 and 27 February 2012).

In view of this, it should be noted that, under Paragraph 4 of Article 69 of the Constitution, not only ordinary laws or provisions thereof, but also the constitutional laws included in the list of constitutional laws or directly specified in the Constitution, may be adopted, as well as their provisions may be amended, by referendum. As mentioned before, constitutional laws should govern the constitutionally important areas of social relationships and particularly significant issues in the life of the state and society. Thus, a different interpretation of the Constitution, according to which, purportedly, the adoption and amendment of all constitutional laws is the exclusive competence of the Seimas, would be incompatible, *inter alia*, with: Paragraph 1 of Article 9 of the Constitution, under which the most significant issues concerning the life of the State and the People are decided by referendum; Article 4 of the Constitution, under which the People execute supreme sovereign power, *inter alia*, directly; and Paragraph 1 of Article 33 of the Constitution, under which citizens have the right to participate in the governance of their state, *inter alia*, directly; thus, the said different interpretation of the Constitution would also be incompatible with the above-mentioned

universal and unquestionable values on which the Constitution is based: such as the sovereignty belonging to the People, democracy, and the recognition of and respect for human rights and freedoms.

It should also be noted that constitutional laws adopted by referendum and constitutional laws amending those laws should be subject to the procedure for signing and official promulgation laid down in Paragraphs 3 and 4 of Article 71 of the Constitution: a constitutional law adopted by referendum must, within 5 days, be signed and officially promulgated by the President of the Republic; if the President of the Republic does not sign and promulgate such a law within the specified period, such a law comes into force after it is signed and officially promulgated by the Speaker of the Seimas.

The legal force of constitutional laws adopted by referendum

The Constitutional Court's ruling of 30 July 2020

It should be mentioned that, as held by the Constitutional Court, under the Constitution, there may not be and there is no confrontation between the supreme sovereign power executed by the People directly and the supreme sovereign power executed by the People through their democratically elected representatives – members of the Seimas; the direct (through a referendum) and indirect (through the representation of the People – the Seimas) forms of the execution of supreme sovereign power by the People may not be opposed against each other (ruling of 11 July 2014).

In view of this, it should be noted that constitutional laws adopted by referendum have the same legal force as constitutional laws adopted by the Seimas in accordance with the procedure laid down in Paragraph 3 of Article 69 of the Constitution; the Seimas has the powers, in accordance with the procedure laid down in Paragraph 3 of Article 69 of the Constitution, i.e. by not less than a 3/5 majority vote of all the members of the Seimas, to amend constitutional laws adopted by referendum.

1.8.4.5. Laws

The supremacy of laws over substatutory acts

The Constitutional Court's ruling of 5 March 2004

A law passed by the Seimas is a primary legal act adopted in accordance with the procedure laid down in the Constitution and the Statute of the Seimas (rulings of 19 January 1994, 26 October 1995, and 29 May 1997). A law can be amended or its validity can be nullified only by the adoption of another law or by the Constitutional Court when it declares the law unconstitutional. Laws must not be in conflict with the Constitution and constitutional laws.

All other legal acts are substatutory legal acts. They are acts of the application of laws and may not replace laws, be in conflict with laws, or amend the content of the norms of laws, and they may not establish any legal regulation that would compete with that established in laws.

In its ruling of 26 October 1995, the Constitutional Court held that laws establish rules of a general character, while substatutory legal acts may particularise these rules and regulate the procedure for their implementation.

It is not allowed to interpret the content of laws on the basis of the interpretation of their content provided in substatutory legal acts

The Constitutional Court's ruling of 12 December 2005

... the content of the legal regulation established in laws may not be interpreted on the basis of the interpretation of their content provided by the Government or other institutions when they, within their competence, pass substatutory legal acts in order to implement the provisions of particular laws.

The supremacy of laws over substatutory acts; there is no delegated legislation in Lithuania

The Constitutional Court's ruling of 28 September 2011

Substatutory acts passed by the Seimas may not regulate those [social] relationships that, under the Constitution, must be regulated by means of a law (ruling of 13 December 2004). The Seimas, while resolving the issues that are the subject matter of regulation by means of laws, may not choose the form of a resolution, because a resolution is a lower-ranking legal act (ruling of 19 January 1994). Substatutory legal acts may not replace laws and may not create any norms of a general character that would compete with the norms established in laws, because the supremacy of laws over substatutory acts, which is consolidated in the Constitution, would thus be violated (rulings of 21 August 2002 and 13 December 2004).

The Constitutional Court has held that the legislature may define the content of the notions used in laws; however, the requirement to pay regard to the hierarchy of legal acts, which stems from the Constitution, *inter alia*, from the constitutional principle of a state under the rule of law, implies that the content of the notions used in laws may be defined (*inter alia*, interpreted) only by means of a law and not by means of a lower-ranking legal act (ruling of 13 November 2006).

[...]

The Constitutional Court has held that there is no delegated legislation in Lithuania (rulings of 26 October 1995, 19 December 1996, 3 June 1999, 5 March 2004, and 13 December 2004); therefore, the Seimas – the legislature – may not assign the Government or other institutions to regulate, by means of substatutory legal acts, those [social] relationships that, under the Constitution, must be regulated by means of laws, and the Government may not accept any such powers. The said relationships may not be regulated by means of substatutory legal acts passed by the Seimas, either (ruling of 13 December 2004). It is clear from the competence of the Seimas, which is established in Article 67 of the Constitution, as well as from the principle of the separation of powers, which is consolidated in Article 5 of the Constitution, that the Seimas may not give the Government any direct instructions of a normative character otherwise than under the legislative procedure for the adoption of laws (ruling of 19 January 1994).

In its ruling of 13 December 2004, the Constitutional Court held that failure to follow the form of a legal act where the Constitution requires that certain relationships be regulated by means of a law, but they are regulated by means of a substatutory act (irrespective of whether such relationships are, from any aspect, additionally regulated in a law the legal regulation established in which is challenged by the legal regulation laid down in a substatutory act, or irrespective of the fact that no law regulates such relationships at all), may provide the sufficient grounds for declaring such a substatutory legal act unconstitutional.

The most important social relationships must be regulated by means of laws

The Constitutional Court's ruling of 29 September 2015

The jurisprudence of the Constitutional Court follows the principled position that the most important social relationships must be regulated by means of laws. The Constitutional Court has also noted on more than one occasion that, under the Constitution, a legal regulation related to defining the content of human rights and freedoms or consolidating the guarantees of their implementation may be established only by means of a law (rulings of 26 October 1995, 19 December 1996, 13 December 2004, 5 May 2007, and 28 September 2011). Under no circumstances is it allowed to establish any conditions for the rise of the right of a person or to limit the scope of his/her right by means of substatutory legal acts (ruling of 5 May 2007).

1.8.4.6. Substatutory legal acts

Substatutory legal acts; a government resolution is a substatutory legal act

The Constitutional Court's ruling of 21 August 2002

In its rulings, the Constitutional Court has held on more than one occasion that the norms of a law are implemented by means of a substatutory legal act; however, such an act may not replace the law itself and create new general legal norms the legal force of which would compete with the norms of the law.

Otherwise, the supremacy of laws over substatutory acts, which is established in the Constitution, would be violated.

A government resolution is a substatutory legal act. It may not contain any legal norms competing with those established in a law.

A government resolution must be in compliance with the norms of a law

The Constitutional Court's ruling of 29 October 2003

In its rulings, the Constitutional Court has held on more than one occasion that, in cases where a government resolution that contains norms conflicting with a law is adopted before the said law is passed, such a government resolution must be brought in line with the norms of the law adopted later, or it must be declared to be no longer valid.

The acts of the President of the Republic are substatutory legal acts

The Constitutional Court's ruling of 30 December 2003

Legal acts passed by the President of the Republic are substatutory legal acts; therefore, in the same way as all other substatutory legal acts, they may not be in conflict with the Constitution, constitutional laws, and laws.

The resolutions of the Seimas on the implementation of laws are substatutory legal acts

The Constitutional Court's ruling of 5 March 2004

The Seimas also has the powers to pass resolutions, specified in Item 2 of Article 94 of the Constitution, on the implementation of laws. In these resolutions, the assignments for other state institutions to take legal and/or organisational action to ensure the implementation of laws may be formulated. However, it needs to be stressed that the resolutions of the Seimas on the implementation of laws are substatutory legal acts; they may not provide for any legal regulation that would compete with that established in laws. Otherwise, they would not meet the constitutional concept that the resolutions of the Seimas on the implementation of laws are substatutory legal acts.

Substatutory legal acts

The Constitutional Court's ruling of 5 May 2007

The Constitutional Court has held in its acts (*inter alia*, the rulings of 30 December 2003, 5 March 2004, 13 December 2004, and 7 February 2005) more than once that the principle of a state under the rule of law consolidated in the Constitution also implies the hierarchy of legal acts, *inter alia*, the fact that substatutory legal acts may not be in conflict with laws, constitutional laws, and the Constitution, that substatutory legal acts must be adopted on the basis of laws, that a substatutory legal act is an act of the application of the norms of a law irrespective of whether that act has one-off (*ad hoc*) application or permanent validity.

At the same time, it needs to be noted that, in certain cases – directly provided for in the Constitution, if particular relationships are not regulated by means of laws (which detail and specify the constitutional legal regulation), the substatutory legal acts whereby particular institutions implement their respective powers, *expressis verbis* established and clearly defined in the Constitution, must be passed by directly invoking the Constitution.

Substatutory legal acts

The Constitutional Court's ruling of 9 October 2014

The Constitutional Court has held on more than one occasion that the constitutional principle of a state under the rule of law implies the hierarchy of all legal acts and does not permit that substatutory legal acts regulate the relationships that may be regulated only by means of a law, nor does it permit that substatutory legal acts establish any such a legal regulation that would compete with that established in a law or that

such a legal regulation would not be based on laws (rulings of 14 March 2006, 22 June 2009, 6 November 2013, and 11 December 2013). Substatutory legal acts may not replace a law and may not create any such norms of a general character that would compete with the norms of a law, because the supremacy of laws over substatutory acts, which is consolidated in the Constitution, would thus be violated (rulings of 21 August 2002, 13 December 2004, and 28 September 2011). ...

The Constitutional Court has also held in its acts that laws establish rules of a general character, while substatutory legal acts may particularise them and regulate the procedure for their implementation (rulings of 26 October 1995, 5 March 2004, and 9 May 2014).

2. THE CONSTITUTIONAL STATUS OF PERSONS

2.1. GENERAL PROVISIONS

2.1.1. The concept and protection of innate human rights and freedoms

The innate nature of human rights and freedoms (Article 18 of the Constitution)

The Constitutional Court's ruling of 9 December 1998

Article 18 of the Constitution prescribes: "Human rights and freedoms shall be innate." The innate nature of human rights means that they are inseparable from an individual and are linked with neither a territory nor a nation. An individual possesses his/her innate rights regardless of whether they are consolidated in legal acts of the state or not. Every individual has these rights; this means that the best and worst people have them.

[...]

... Innate human rights are the innate possibilities of an individual that ensure his/her human dignity in the spheres of social life.

The duty of the state to ensure the protection of human rights and freedoms (Article 18 of the Constitution)

The Constitutional Court's ruling of 30 June 2000

Article 18 of the Constitution states: "Human rights and freedoms shall be innate."

Under the Constitution, the state is obligated to respect human rights and freedoms and, by making use of legal, material, or organisational means, to guarantee their protection from any unlawful attempt or limitation.

State institutions and their officials must protect and defend human rights and freedoms; in particular, it is important that, while fulfilling the functions entrusted to them, they themselves would not violate human rights and freedoms.

One of the main ways of protecting violated rights and freedoms is compensation for damage inflicted as a result of unlawful actions.

The principle of the recognition of the innate nature of human rights and freedoms (Article 18 of the Constitution)

The Constitutional Court's ruling of 29 December 2004

Article 18 of the Constitution provides that human rights and freedoms are innate.

The principle of the recognition of the innate nature of human rights and freedoms is consolidated in this article of the Constitution. At the same time, it should be noted that this article of the Constitution does not specify particular innate human rights and freedoms – they are consolidated in other articles (parts thereof) of the Constitution.

The principle of the recognition of the innate nature of human rights and freedoms, which is consolidated in the Constitution, means that an individual has the rights and freedoms that are inseparable from his/her person and may not be taken from him/her, as well as that an individual has them *ipso facto*.

In its 9 December 1998 ruling, the Constitutional Court stated: "The innate nature of human rights means that they are inseparable from an individual and are linked with neither a territory nor a nation. An individual possesses his/her innate rights regardless of whether they are consolidated in legal acts of the state or not. Every individual has these rights; this means that the best and worst people have them." The

constitutional recognition of the innate nature of human rights and freedoms implies that it is not allowed to establish such a procedure for implementing the said rights and freedoms that would make their implementation dependent on decisions adopted by state institutions, officials, or other persons where such decisions are not based on law.

The principle of the recognition of the innate nature of human rights and freedoms is also revealed in various articles (parts thereof) of the Constitution, which consolidate certain human rights and freedoms. This principle is also part of the foundations of the constitutional order of the Republic of Lithuania as a democratic state under the rule of law: one of the major tasks of a democratic state under the rule of law is to defend and protect these rights and freedoms. The consolidation of human rights and freedoms in the Constitution implies the duty of the legislature and other law-making subjects, when adopting legal acts that regulate the relationships of an individual and the state, to follow the priority of human rights and freedoms, to establish sufficient measures of protecting and defending human rights and freedoms, never to violate these rights and freedoms, and not to allow others to violate them.

It should also be noted that it is impossible to make the interpretation that any human right or freedom that is consolidated in the Constitution is innate only due to the fact that it is consolidated in the Constitution. A violation of a certain human right or freedom consolidated in the Constitution in itself does not mean that the principle of the recognition of the innate nature of human rights and freedoms, consolidated in Article 18 of the Constitution, is violated.

The human rights and freedoms consolidated in the Constitution comprise a single and harmonious system. The Constitution consolidates such a concept of human rights and freedoms whereby the rights and freedoms of one person coexist with the rights and freedoms of other persons. ... when exercising his/her rights and freedoms, everyone must observe the Constitution and the laws of the Republic of Lithuania and must not restrict the rights and freedoms of other people (Article 28 of the Constitution). In its 13 February 1997 ruling, the Constitutional Court stated that conflicts often arise and sometimes even contradictions originate between the rights and freedoms of an individual, on the one hand, and the interests of society, on the other hand, that such contradictions in a democratic state are solved by harmonising different interests and by seeking not to disturb their balance, and that one of the ways to harmonise interests is the limitation of the implementation of the rights and freedoms of an individual.

The principle of the recognition of the innate nature of human rights and freedoms does not deny the fact that the implementation of human rights and freedoms may be subject to limitation. ... according to the Constitution, the implementation of constitutional human rights and freedoms may be subject to limitation if the following conditions are observed: the limitations are established by means of a law; the limitations are necessary in a democratic society in order to protect the rights and freedoms of other persons, the values consolidated in the Constitution, and the constitutionally important objectives; the limitations do not deny the nature and essence of rights and freedoms; and the constitutional principle of proportionality is followed.

The duty of the state to ensure the protection and defence of human rights and freedoms

The Constitutional Court's ruling of 19 August 2006

The Constitution is an anti-majoritarian act; it protects the individual. The Constitutional Court has held that the state is constitutionally obliged to ensure, by making use of legal, material, or organisational means, the protection of human rights and freedoms from any unlawful attempt or limitation and to establish sufficient means for the defence and protection of human rights and freedoms (rulings of 30 June 2000 and 29 December 2004).

Under the Constitution, the state must not only ensure the protection of human rights and freedoms from unlawful attempts made by other persons, but also must not, in any manner, permit any unlawful infringements on or violation of human rights and freedoms by state institutions or officials themselves (rulings of 30 June 2000, 13 December 2004, and 29 December 2004). In this context, it should be emphasised that people may reasonably consider that state institutions and officials express or execute the

will of the state (both, when they execute the functions entrusted to them and when they do not implement any of their powers). State institutions and officials may, in no circumstances, act *ultra vires*, nor may they violate human rights and freedoms by unlawful actions. Otherwise, the trust of people in state power, laws, and law would be ruined and legal nihilism would flourish. Tolerance towards the unlawful actions of state institutions and officials by which human rights and freedoms are violated and failure to prevent them would lead to a huge social disbalance; the fundamental balance would be violated where an individual virtually has no means and possibilities of resisting the arbitrariness of the powerful mechanism – the state. When an individual is left with no effective institutionalised help, he/she is suppressed by the whole power of the state mechanism.

The principle of the recognition of the innate nature of human rights and freedoms

The Constitutional Court's decision of 19 November 2012

... one of the constitutional foundations of the Republic of Lithuania, as a democratic state under the rule of law, is the principle of the recognition of the innate nature of human rights and freedoms (rulings of 29 December 2004 and 22 December 2010). This principle should also be regarded as a fundamental constitutional value that is inseparably related to the constitutional values – independence, democracy, and the republic – that constitute the foundation of the State of Lithuania as the constitutionally consolidated common good of all society; the innate nature of human rights and freedoms may not be denied, either.

2.1.2. The principle of the equality (of the rights) of persons

The principle of the equality of persons (Paragraph 1 of Article 29 of the Constitution)

The Constitutional Court's ruling of 18 April 1996

Paragraph 1 of Article 29 of the Constitution prescribes: “All persons shall be equal before the law, courts, and other state institutions and officials.”

The principle of the equality of all persons before the law is the basis of democratic society. The constitutional provision “all persons shall be equal before the law” requires that fundamental rights and freedoms for every person should, equally with others and with no exceptions, be consolidated in the legal system of the country. In this provision, the formal equality of all persons is proclaimed. In its ruling of 28 February 1996, the Constitutional Court held the following: “... As such, the constitutional principle of the equality of persons does not deny the possibility of establishing, by means of a law, a legal regulation that is differentiated with respect to certain categories of persons who are in different situations. This should also be applied not only to natural persons, but also to legal persons ...” ...

The provision “all persons shall be equal before courts” of the principle of the equality of all persons, which is consolidated in Paragraph 1 of Article 29 of the Constitution, is a constituent part of this principle. In a democratic state, a court is the main institutional guarantee of human rights and freedoms. Paragraph 1 of Article 30 of the Constitution prescribes: “A person whose constitutional rights or freedoms are violated shall have the right to apply to a court.” This is the principle of the priority and universality of constitutional judicial protection, the effectiveness of which is directly linked with the constitutional principle “all persons shall be equal before courts”.

The principle of the equality of persons (Paragraph 1 of Article 29 of the Constitution)

The Constitutional Court's ruling of 23 February 2000

Paragraph 1 of Article 29 of the Constitution provides that “All persons shall be equal before the law, courts, and other state institutions and officials”.

In its ruling of 28 February 1996, the Constitutional Court held that the constitutional principle of the equality of persons should be applied not only to natural persons, but also to legal persons.

The principle of the equality of persons

The Constitutional Court's ruling of 30 June 2000

... the constitutional principle of the equality of all persons before the law, courts, and other state institutions and officials obligates the state to defend the rights and freedoms of every person by equally effective means.

The principle of the equality of persons (Article 29 of the Constitution)

The Constitutional Court's ruling of 4 July 2003

Paragraph 1 of Article 29 of the Constitution consolidates the formal equality of all persons and Paragraph 2 of this article lays down the principle prohibiting the discrimination of persons and the granting of privileges. The constitutional principle of the equality of persons before the law means the innate right of an individual to be treated equally with others.

In its rulings, the Constitutional Court has held on more than one occasion that this principle should be followed in the course of both the adoption and application of laws. The said principle imposes the obligation to assess homogenous facts in the same manner and prohibits any arbitrary assessment of essentially the same facts in a different manner. It should also be noted that, on the other hand, the constitutional principle of the equality of persons before the law does not deny the possibility of establishing, by means of a law, a legal regulation that is differentiated with respect to certain categories of persons who are in different situations. The diversity of social life may determine the manner and content of the respective legal regulation.

[...]

The principle of the equality of all persons, which is consolidated in Article 29 of the Constitution, includes the prohibition of both discrimination and privileges. Discrimination is most often understood as a restriction on human rights on the basis of gender, race, nationality, language, origin, social status, religion, convictions, opinions, or other indications. However, a differentiated legal regulation where it is applied to certain groups of persons that are characterised by the same features and if, in this way, it pursues positive and socially meaningful goals is not regarded as discrimination or privileges. It was noted in the Constitutional Court's conclusion of 24 January 1995 that the so-called "positive discrimination" may not be interpreted as the granting of privileges. Special requirements or certain conditions are not categorised as discriminative limitations, either, if their establishment is related to the particularities of the regulated relationships.

The principle of the equality of persons (Article 29 of the Constitution)

The Constitutional Court's ruling of 30 December 2003

Article 29 of the Constitution consolidates the principle of the equality of all persons before the law, courts, and other state institutions and officials. In its rulings, the Constitutional Court has held on more than one occasion that this is the principle of the formal equality of persons. When interpreting the content of Article 29 of the Constitution, the Constitutional Court has held more than once in its rulings that this principle must be followed in the course of the adoption and application of laws. This principle imposes the obligation to legally assess homogenous facts in the same manner and prohibits any arbitrary assessment of essentially the same facts in a different manner.

The principle of the equality of all persons also means that the subjects of a certain type of relationships – all persons (groups thereof) identified by the same features – must be subject to the same law or another legal act – the same measure, common and equal to all subjects of that category. The legal norms of substantive law and of procedural law must be applied in an equal manner.

The constitutional principle of the equality of all persons before the law would be violated if a certain group of persons addressed by a particular legal norm, compared with other addressees under the same norm, were treated differently, although between them there would be no differences of such a nature or scope that could objectively justify their uneven treatment (ruling of 20 November 1996).

The principle of the equality of persons (Article 29 of the Constitution)

The Constitutional Court's ruling of 13 December 2004

In interpreting the provisions of Article 29 of the Constitution, the Constitutional Court has held more than once that the constitutional principle of the equality of all persons, which must be followed both in adopting laws and applying them, as well as in administering justice, imposes the obligation to legally assess homogenous facts in the same manner and prohibits any arbitrary assessment of essentially the same facts in a different manner, also that the constitutional principle of the equality of all persons means the innate human right to be treated equally with others, that it consolidates the formal equality of all persons, and that it does not allow any discrimination of persons or granting them any privileges. In addition, the Constitutional Court has noted on more than one occasion that the constitutional principle of the equality of all persons does not deny a different (differentiated) legal regulation, established by means of a law, with respect to certain categories of persons who are in different situations; the diversity of social life may determine the manner and content of the respective legal regulation. The constitutional principle of the equality of persons does not deny the possibility of treating individuals in a different manner where account is taken of their status or situation (ruling of 30 December 2003). However, the constitutional principle of the equality of all persons before the law would be violated if a certain group of persons addressed by a particular legal norm, compared with other addressees under the same norm, were treated differently, although between them there would be no differences of such a nature or scope that could objectively justify their uneven treatment (rulings of 20 November 1996 and 30 December 2003).

The principle of the equality of persons in criminal procedure law and in criminal law

See 3. Legal responsibility, 3.2. Criminal proceedings, the ruling of 8 January 2009.

The connection of the principle of the equality of persons with other provisions of the Constitution

The Constitutional Court's ruling of 9 November 2010

The principle of the equality of persons, which is consolidated in Article 29 of the Constitution, should be interpreted inseparably from other provisions of the Constitution, *inter alia*, from the provisions consolidating the rights and freedoms of a person, as well as from the constitutional principle of a state under the rule of law, which, as held by the Constitutional Court in its rulings more than once, is a universal principle on which the entire legal system of Lithuania and the Constitution itself are based.

It should be noted that the constitutional principle of a state under the rule of law implies that the legislature and other law-making subjects are subject to various requirements: law-making subjects are allowed to pass legal acts only without exceeding their powers; when legally regulating certain social relationships, it is obligatory to pay regard to the requirements of natural justice, comprising, *inter alia*, the necessity to ensure the equality of persons before the law, courts, state institutions, or officials, etc. (rulings of 13 December 2004, 16 January 2006, and 22 March 2010).

The principle of the equality of persons

The Constitutional Court's ruling of 6 February 2012

The Constitutional Court has held on more than one occasion that the constitutional principle of the equality of persons should be followed both in the adoption and application of laws; the constitutional principle of the equality of persons before the law means the innate right of an individual to be treated equally with others and it imposes the obligation to assess homogenous facts in the same manner and prohibits any arbitrary assessment of essentially the same facts in a different manner.

The constitutional principle of the equality of the rights of persons would be violated if certain persons or groups of such persons were treated in a different manner even though between them there would be no differences of such a nature or scope that could objectively justify their uneven treatment. The Constitutional Court has held on more than one occasion in its acts that this principle does not in itself deny the possibility of establishing, by means of a law, an uneven and differentiated legal regulation with respect to certain persons that belong to different categories if there are differences between the said persons of such a nature that can objectively justify that differentiated regulation. However, as noted by the

Constitutional Court, as such, a differentiated legal regulation where it is applied to certain groups of persons that are characterised by the same features and if it pursues positive and socially meaningful goals, or if the establishment of certain limitations or conditions is linked to the particularities of the regulated social relationships, should not be regarded as discriminatory. The Constitutional Court has emphasised on more than one occasion in its acts that, where a different legal regulation is assessed whether it is established reasonably, account must be taken of concrete legal circumstances; first of all, consideration must be given to differences in the legal situation of the subjects and objects to which a certain differentiated legal regulation is applied.

The connection of the principle of the equality of persons with the principle of a state under the rule of law (Article 29 of the Constitution)

The Constitutional Court's ruling of 30 April 2013

The Constitutional Court has ... held that the principle of the equality of the rights of persons, which is consolidated in the Constitution, *inter alia*, Article 29 thereof, is inseparable from the constitutional principle of a state under the rule of law, which is a universal principle on which the entire Lithuanian legal system and the Constitution itself are based (*inter alia*, the rulings of 28 May 2010 and 15 February 2013). The Constitutional Court has also held that ... the content of the [constitutional principle of a state under the rule of law] reveals itself in various provisions of the Constitution, *inter alia*, Article 29 thereof, in which the principle of the equality of the rights of persons is consolidated. Any violation of the constitutional principle of the equality of the rights of persons is, at the same time, a violation of the constitutional imperatives of justice and harmonious society and, thus, also a violation of the constitutional principle of a state under the rule of law (*inter alia*, the rulings of 6 February 2012, 14 December 2012, and 22 February 2013).

The Constitution does not protect and does not defend privileges

The Constitutional Court's ruling (no KT26-N13/2016) of 5 October 2016

As held by the Constitutional Court on more than one occasion, the Constitution does not protect and does not defend any such rights acquired by a person that are privileges in terms of their content; the defence and protection of privileges would mean the violation of the constitutional principles of the equality of the rights of persons and justice, as well as the imperative of harmonious society, consolidated in the Constitution, and, thus, also the constitutional principle of a state under the rule of law (*inter alia*, the rulings of 13 December 2004 and 5 July 2007 and the decision of 2 July 2010).

The principle of the equality of persons (Article 29 of the Constitution)

The Constitutional Court's ruling (no KT28-N14/2016) of 27 October 2016

The Constitutional Court has held on more than one occasion that the constitutional principle of the equality of persons, which is consolidated in Article 29 of the Constitution, should be followed both in the adoption and application of laws; the constitutional principle of the equality of persons before the law means the right of an individual to be treated equally with others, it imposes the obligation to assess homogenous facts in the same manner and prohibits any arbitrary assessment of essentially the same facts in a different manner. The constitutional principle of the equality of the rights of persons would be violated if certain persons or groups of such persons were treated in a different manner even though between them there would be no differences of such a nature or scope that could objectively justify their uneven treatment. As such, a differentiated legal regulation where it is applied to certain groups of persons that are characterised by the same features and if it pursues positive and socially meaningful goals, or if the establishment of certain limitations or conditions is linked to the particularities of the regulated social relationships, should not be regarded as discriminatory. The Constitutional Court has noted on more than one occasion in its acts that, where a different legal regulation is assessed whether it is established reasonably, account must be taken of concrete legal circumstances; first of all, consideration must be given

to differences in the legal situation of the subjects and objects to which a certain differentiated legal regulation is applied.

The constitutional principle of the equality of the rights of persons is inseparable from the constitutional principle of a state under the rule of law, which integrates various values consolidated, protected, and defended under the Constitution.

The prohibition of discrimination – one of the elements of the constitutional protection of human dignity (Article 29 of the Constitution)

The Constitutional Court's conclusion of 19 December 2017

The prohibition of discrimination against persons on the grounds of gender, race, nationality, language, origin, social status, belief, convictions, or views, which arises from Article 29 of the Constitution and consolidates the principle of the equality of the rights of persons, should also be considered an element of the constitutional protection of human dignity.

The Constitutional Court has noted that discrimination is most often understood as the restriction of the rights of an individual or as the granting of certain privileges based on one's gender, race, nationality, language, origin, social status, belief, convictions, or views (ruling of 11 November 1998). Paragraph 2 of Article 29 of the Constitution is a derivative of Paragraph 1 of the same article, because Paragraph 2 of Article 29 of the Constitution does not allow violations of the equality of rights, by stipulating that "Human rights may not be restricted; no one may be granted any privileges on the grounds of gender, race, nationality, language, origin, social status, belief, convictions, or views" (conclusion of 24 January 1995).

... dignity is an inalienable characteristic of a human being as the greatest social value. All people by nature should be deemed equal in terms of their dignity and rights. Thus, discrimination prohibited under Article 29 of the Constitution in cases where human rights are restricted on the grounds of gender, race, nationality, language, origin, social status, belief, convictions, or views also degrades the dignity of the discriminated individual.

Harassment as one of the forms of discrimination

The Constitutional Court's conclusion of 19 December 2017

... one of the forms of discrimination (including the degrading of human dignity), prohibited under Article 29 of the Constitution, is harassment, which is understood as offensive, unacceptable, or unwanted conduct that has the purpose or effect of violating the dignity of a person, or creating a hostile, intimidating, humiliating, or offensive environment for a person on the grounds of gender, race, nationality, language, origin, social status, belief, convictions, or views, as well as other attributes such as disability, age, or sexual orientation. It should be noted that harassment is also inevitably an infringement on the physical or mental inviolability of a person, *inter alia*, it disturbs the physical, mental, or spiritual state of the person, restricts the expression of his/her freedom of physical activity, as well as intellectual and creative freedoms and, thus, also the expression of his/her free personality, and can make the relationships of the person with other persons more complicated. Harassment can lead to long-term or even permanent consequences that adversely affect the private and social life of the person.

In view of this, it should be held that harassment violates the human rights to the protection of dignity and to the inviolability of the human person and private life, as well as the right of non-discrimination, which are protected under Paragraphs 1, 2, and 3 of Article 21, Paragraphs 1 and 4 of Article 22, and Article 29 of the Constitution.

[...]

... in order to identify the facts of harassment, it is not necessary that a harassed person should clearly and categorically oppose such conduct where it is obvious that this person found such conduct unacceptable and objectively offensive; in assessing whether certain conduct should be considered harassment, including harassment based on gender (*inter alia*, sexual harassment), consideration should be given to the fact how the harassed person perceived such conduct (*inter alia*, it is not necessary to establish that an individual

who possibly committed harassment did so with the purpose of degrading the dignity of the person or with the purpose of creating an intimidating, hostile, humiliating, or offensive environment for him/her).

It should also be noted that, in the light of the said nature and consequences of harassment, *inter alia*, harassment based on gender and sexual harassment, and in view of the fact that, under Paragraph 4 of Article 22 of the Constitution, *inter alia*, courts protect everyone from arbitrary or unlawful interference with his/her private and family life, as well as from infringement on his/her honour and dignity, in order to deny the facts of the committed harassment, the mere denial of them by a person who has possibly committed harassment is not sufficient, but it is obligatory to take into account all other circumstances that are significant for identifying the committed harassment.

The principle of the equality of the rights of persons and the prohibition of discrimination; the restriction of the rights of a person on the grounds of gender identity and/or sexual orientation as one of the forms of discrimination (Article 29 of the Constitution)

The Constitutional Court's ruling of 11 January 2019

Article 29 of the Constitution consolidates the principle of the equality of the rights of persons, which prohibits discrimination against anyone on the grounds of gender, race, nationality, language, origin, social status, belief, convictions, or views; discrimination prohibited under Article 29 of the Constitution in cases where human rights are restricted on the grounds of gender, race, nationality, language, origin, social status, belief, convictions, or views also degrades the dignity of the discriminated individual (conclusion of 19 December 2017).

The Constitutional Court has held that discrimination is most often understood as the restriction of the rights of an individual based on gender, race, nationality, language, origin, social status, belief, convictions, views, or other characteristics (rulings of 4 July 2003, 17 November 2003, and 3 December 2003). Paragraph 2 of Article 29 of the Constitution is a derivative of Paragraph 1 of the same article, as it does not allow the violations of the equality of the rights of persons – the general rule, set out in Paragraph 1 of Article 29 of the Constitution: “All persons shall be equal before the law, courts, and other state institutions and officials” (conclusion of 24 January 1995).

In view of this, the content of the constitutional principle of the equality of the rights of persons may be revealed only by interpreting Paragraphs 1 and 2 of Article 29 of the Constitution in conjunction with each other. Therefore, Paragraph 2 of Article 29 of the Constitution may not be understood as consolidating an exhaustive list of the grounds of non-discrimination; otherwise, the preconditions would be created for denying the equality of all persons before the law, courts, and other state institutions, i.e. the very essence of the constitutional principle of the equality of the rights of persons, as guaranteed under Paragraph 1 of Article 29 of the Constitution.

... one of the forms of discrimination, prohibited under Article 29 of the Constitution, is the restriction of the rights of a person on the grounds of gender identity and/or sexual orientation; such restriction should also be regarded as degrading human dignity.

... only a state that has respect for the dignity of every human being can be considered to be truly democratic. It needs to be emphasised that, as noted by the Constitutional Court, the Constitution is an anti-majoritarian act, which protects the individual (ruling of 19 August 2006).

In view of this ... it should be noted that, in a democratic state under the rule of law, the attitudes or stereotypes prevailing in a certain period of time among the majority of the members of society may not, based on the constitutionally important objectives, *inter alia*, ensuring public order, serve as the constitutionally justifiable grounds for discriminating against persons solely on the basis of their gender identity and/or sexual orientation, *inter alia*, for limiting the right, ensured under Paragraphs 1 and 4 of Article 22 of the Constitution, to the protection of private and family life, among other things, the protection of relationships with other family members.

The restriction of the rights of a person on the basis of age as one of the grounds of discrimination (Article 29 of the Constitution)

The Constitutional Court's ruling of 10 February 2020

... one of the grounds of discrimination, prohibited under Article 29 of the Constitution, is the restriction of the rights of a person on the basis of age.

2.1.3. Limitations on the rights and freedoms of persons

Conditions for limiting human rights and freedoms

The Constitutional Court's ruling of 6 May 1997

The Constitutional Court ... in its ruling of 13 February 1997, held that limitations on human rights and freedoms are possible, i.e. they are regarded as justifiable if they meet two conditions: (1) they are legitimate and (2) they are indispensable in a democratic society. The requirement of legitimacy indicates that the limitations must be set only by means of a law, which is published; the norms of such a law must be sufficiently clearly formulated. When the limits of the implementation of rights are defined by means of laws, it is necessary to take account of the purpose and meaning of a particular right (or freedom) and the possibilities and conditions for its limitation established in the Constitution. Regarding the question whether a concrete limitation is indispensable in a democratic society, firstly, the aims and purpose of the limitation must be ascertained and, secondly, it is necessary to determine whether the limitation measures are proportionate to the legitimate objective sought.

Conditions for limiting human rights and freedoms

The Constitutional Court's ruling of 29 December 2004

Article 28 of the Constitution provides that, while implementing his/her rights and exercising his/her freedoms, everyone must observe the Constitution and laws of the Republic of Lithuania and must not restrict the rights and freedoms of other people. The constitutional consolidation of human rights and freedoms does not mean that their implementation may not be subject to limitation. In its rulings, the Constitutional Court has held more than once that, according to the Constitution, it is allowed to limit the implementation of human rights and freedoms if the following conditions are followed: the limitations are established by means of a law; the limitations are necessary in a democratic society in order to protect the rights and freedoms of other persons, the values consolidated in the Constitution, and the constitutionally important objectives; the limitations do not deny the nature and essence of rights and freedoms; and the constitutional principle of proportionality is observed.

... when deciding whether a law limiting the implementation of the rights and freedoms of a person infringes the constitutional principle of proportionality as one of the elements of the constitutional principle of a state under the rule of law, it is necessary to assess whether the measures established in the law are in compliance with the legitimate objectives important to society, whether these measures are necessary in order to reach the said objectives, and whether these measures restrict the rights and freedoms of a person clearly more than necessary in order to reach the said objectives.

[...]

... in its ruling of 13 February 1997, the Constitutional Court stated that conflicts often arise and sometimes even contradictions originate between the rights and freedoms of an individual, on the one hand, and the interests of society, on the other hand, that such contradictions in a democratic state are solved by harmonising different interests and seeking not to disturb their balance, and that one of the ways to harmonise interests is the limitation of the implementation of human rights and freedoms.

The principle of the recognition of the innate nature of human rights and freedoms does not deny that the implementation of human rights and freedoms may be subject to limitation.

A limitation on human rights may not violate the essence of such rights

The Constitutional Court's ruling of 5 March 2013

... the jurisprudence of the Constitutional Court takes the position that, under the Constitution, a limitation on human rights may not violate the essence of such rights; if a right is limited to the extent that its implementation becomes impossible, if a right is restricted to the extent that reasonable limits are exceeded, or if the legal protection of a right is not be ensured, this constitutes grounds for asserting that the very essence of such a right is violated, which would be tantamount to denying the said right (rulings of 18 April 1996 and 23 February 2000).

Individualising limitations on human rights and freedoms

The Constitutional Court's ruling of 14 April 2014

The requirement, while complying with the constitutional principle of proportionality, not to limit the rights and freedoms of a person more than necessary in order to reach the legitimate objectives important to society, *inter alia*, implies the requirement for the legislature to establish a legal regulation that would create the preconditions for the sufficient individualisation of limitations on the rights and freedoms of a person: a legal regulation limiting the rights and freedoms of a person, as provided for in a law, must be such that would create the preconditions for assessing, to the extent possible, an individual position of each person and, in view of all important circumstances, for individualising accordingly the specific measures that are applicable to and limit the rights of that person (ruling of 7 July 2011).

The limitation of human rights and freedoms acquired under the law

The Constitutional Court's ruling of 8 November 2019

In its rulings, the Constitutional Court has also held on more than one occasion that, under the Constitution, the rights and freedoms of a person may be subject to limitation if the following conditions are observed: the limitations are established by means of a law; the limitations are necessary in a democratic society in order to protect the rights and freedoms of other persons, the values consolidated in the Constitution, and the constitutionally important objectives; the limitations do not deny the nature and essence of rights and freedoms; and the constitutional principle of proportionality is followed (*inter alia*, the rulings of 26 January 2004, 9 May 2014, and 18 April 2019). The constitutional principle of proportionality, as one of the elements of the constitutional principle of a state under the rule of law, means that the measures provided for in legal acts must be in line with the legitimate objectives important to society and that these measures must be necessary in order to reach the said objectives and may not restrict the rights and freedoms of the person clearly more than necessary in order to reach the said objectives (*inter alia*, the rulings of 7 July 2011, 14 February 2014, and 17 February 2016).

It should be noted that these conditions in relation to limiting the exercise of the rights and freedoms of persons should be *mutatis mutandis* applied to limit the exercise of the rights of persons acquired under the law implementing the duty of the state, stemming from Paragraph 2 of Article 38 and Paragraph 3 of Article 39 of the Constitution, to defend the interests of children in cases where their parents (one of their parents) fail(s) to fulfil their constitutional duty to support their children.

The individualisation of limitations on the rights acquired under the law

The Constitutional Court's ruling of 5 June 2020

The principle of proportionality is an element of the constitutional principle of a state under the rule of law; the principle of proportionality means that the measures provided for in legal acts must be in line with the legitimate objectives important to society and that these measures must be necessary in order to reach the said objectives and must not restrict the rights and freedoms of the person clearly more than necessary in order to reach the said objectives (*inter alia*, the rulings of 31 October 2012, 1 July 2013, and 25 June 2019). The requirement not to limit the rights and freedoms of a person more than necessary in order to reach the legitimate objectives important to society, *inter alia*, implies the requirement for the legislature to establish such a legal regulation that creates the preconditions for the sufficient individualisation of limitations on the rights and freedoms of a person: a legal regulation, provided for in a law, on limiting the rights and freedoms of a person must be such that creates the preconditions for

assessing, to the extent possible, the individual position of each person and, in view of all important circumstances, for individualising accordingly the specific measures that are applicable to and limit the rights of that person (*inter alia*, the rulings of 7 July 2011, 17 February 2016, and 25 June 2019).

It should be noted that these provisions of the official constitutional doctrine, under which the legislature must establish such a legal regulation that creates the preconditions for the sufficient individualisation of limitations on the rights and freedoms of a person, are *mutatis mutandis* applicable to the right acquired under a law to acquire and possess certain weapons and ammunition.

2.1.4. The constitutional duties of persons

The duty of persons not to restrict the rights and freedoms of other people (Article 28 of the Constitution)

The Constitutional Court's ruling of 8 May 2000

Article 28 of the Constitution states: "While implementing his rights and exercising his freedoms, everyone must observe the Constitution and laws of the Republic of Lithuania and must not restrict the rights and freedoms of other people."

This article of the Constitution establishes one of essential principles, which means that the lawful conduct of an individual is not without limitations and absolutely free. An individual, as he/she is a social being, lives in society among similar individuals, who are equal in terms of their dignity and rights. Each individual has duties to society; it is only in society that his/her personality may develop freely and fully; and the principal duty among the said duties is not to restrict the rights and freedoms of other people.

The constitutional duty of parents to bring up their children to be honest people and faithful citizens and to support them until they reach the age of majority

The Constitutional Court's ruling of 13 June 2000

... The purposefulness, quality, and diversity of education must be guaranteed not only by the state and municipal establishments of teaching and education that are pointed out in the Constitution, but also by parents (legal guardians), who have the constitutional right to take care of the religious and moral education of their children (wards) in conformity with their own convictions, also the constitutional duty to bring them up to be honest people and faithful citizens, as well as to support them until they reach the age of majority. Implementing these constitutional rights and freedoms, parents (legal guardians) may not refuse to cover part of the expenses for the education of their children.

The constitutional duty to pay taxes

The Constitutional Court's ruling of 15 February 2013

The duty to pay taxes is a constitutional duty (*inter alia*, the rulings of 10 July 1997 and 24 January 2006). It needs to be noted that, when such a duty is established by means of a law, regard must be paid to the Constitution, *inter alia*, the constitutional principles of justice, proportionality, legal certainty, and the protection of the legitimate expectations of persons.

The constitutional duty of parents to support their children

See 2.4.2.4. The duty of the state to ensure the protection of family, motherhood, fatherhood, and childhood, the ruling of 8 November 2019.

2.1.5. The guarantees of the rights of persons

2.1.5.1. General provisions

The protection of the rights and freedoms of persons

The Constitutional Court's ruling of 11 May 1999

One of the essential features of a state under the rule of law is the protection of the rights and freedoms of individuals. ...

[...]

... When the protection of the rights of individuals is guaranteed, it is necessary to pay regard to the fundamental principles of a state under the rule of law; such principles require that jurisdictional and other law-applying institutions be impartial and independent, that they seek to establish the objective truth, and that they adopt their decisions only on the grounds of law. This is possible only if proceedings are public, the parties to proceedings have equal rights, and legal disputes, in particular those regarding the rights of a person, are decided by ensuring that a particular person has the right and possibility of defending those rights. In a state under the rule of law, the right of individuals to defend their rights is unquestionable. ...

... The recognition of the rights of an individual is a necessary element of the rule of law.

Persons have the right to defend their violated rights by invoking the Constitution*The Constitutional Court's ruling of 12 April 2001*

The Constitutional Court notes that a person must have the right, by invoking the Constitution, to defend his/her violated rights and that, according to the Constitution, the possibility of defending the violated rights must be real.

The implementation of a certain constitutional right may not result in the loss of the possibility of implementing another constitutional right*The Constitutional Court's ruling of 25 November 2002*

In its ruling of 30 June 2000, the Constitutional Court held that, under the Constitution, it is not allowed to establish any such a legal regulation by which a person, in implementing a certain constitutional right, would lose the possibility of implementing another constitutional right.

A legal regulation related to defining the content of human rights and freedoms and to the guarantees of their implementation must be established by means of a law*The Constitutional Court's ruling of 5 May 2007*

As already held more than once by the Constitutional Court in its acts, according to the Constitution, a legal regulation related to defining the content of human rights and freedoms and to consolidating the guarantees of their implementation may be established only by means of a law; however, in cases where the Constitution does not require that certain relationships related to human rights and their implementation (*inter alia*, the procedural relationships of the implementation of human rights, etc.) be regulated by means of a law, it is also possible to regulate them by means of substatutory legal acts. For example, in certain cases, the need that a legal regulation laid down in laws be specified and particularised by more details in substatutory legal acts can be determined by the necessity in lawmaking to rely on special knowledge or special (professional) competence (ruling of 7 February 2005). However, as the Constitutional Court held in its rulings on more than one occasion, under no circumstances is it allowed to establish any conditions for the rise of the right of a person or to limit the scope of his/her right by means of substatutory legal acts; substatutory legal acts may not establish such a legal regulation of the relationships **linked with** human rights and their implementation that would compete with the legal regulation established in laws.

Legal acts regulating the relationships linked with constitutional human rights may not bear any security classification markings*The Constitutional Court's ruling of 27 June 2007*

... the Constitutional Court has held that the legal normative acts regulating the relationships linked with constitutional human rights and freedoms and with their implementation may not bear any security classification markings (ruling of 5 April 2000).

2.1.5.2. The right to fair proceedings

The right to fair legal proceedings

The Constitutional Court's ruling of 10 November 2005

According to the Constitution, every person who is held legally liable has the right to fair legal proceedings. The Constitutional Court has stated that, according to the Constitution, a person who believes that his/her rights and freedoms are violated has the right to defend his/her rights and freedoms in a court (rulings of 2 July 2002, 4 March 2003, 17 August 2004, and 7 February 2005); the right of a person to an independent, impartial, and fair court, which would solve a dispute, may not be denied (ruling of 13 December 2004).

The right to the due process of law

The Constitutional Court's ruling of 9 July 2015

The Constitutional Court has held on more than one occasion that the constitutional principle of a state under the rule of law, as well as the right of a person to apply to a court (Paragraph 1 of Article 30 of the Constitution), implies the right of a person to the due process of law, *inter alia*, to the due court process.

2.1.5.2.1. The right of access to a court

The principle of judicial protection (Paragraph 1 of Article 30 of the Constitution)

The Constitutional Court's ruling of 2 July 2002

The constitutional principle of judicial protection is consolidated in Paragraph 1 of Article 30 of the Constitution. In its ruling of 18 April 1996, the Constitutional Court held that, in a democratic state, a court is the main institutional guarantee of human rights and freedoms and that the constitutional principle of judicial protection is universal.

It should be noted that, under the Constitution, the legislature has the duty to establish such a legal regulation on the basis of which all disputes concerning the violation of the rights or freedoms of individuals could be resolved in a court. A prelitigation procedure for settling disputes may also be provided for. However, it is not permitted to establish any such a legal regulation that would deny the right of an individual who believes that his/her rights or freedoms are violated to defend his/her rights and freedoms in a court.

In its ruling of 8 May 2000, the Constitutional Court held that a person is guaranteed the protection of his/her violated rights in a court regardless of the legal status of this person and that the violated rights and legitimate interests of persons must be protected in a court irrespective of whether they are directly consolidated in the Constitution or not.

The right of access to a court (Paragraph 1 of Article 30 of the Constitution)

The Constitutional Court's ruling of 4 March 2003

The constitutional right to apply to a court means that, in a state under the rule of law, everyone is given the possibility of defending their rights in a court against unlawful actions of other persons and those of state institutions or officials. The provision of Paragraph 1 of Article 30 of the Constitution that a person whose constitutional rights or freedoms are violated has the right to apply to a court consolidates the constitutional right of a person to have an impartial arbiter of a dispute (rulings of 1 October 1997 and 12 July 2001). The provision of Paragraph 1 of Article 30 of the Constitution consolidates the constitutional principle of the priority and universality of judicial protection; the effectiveness of the said principle is directly related to the provision of Article 29 of the Constitution, whereby all persons are equal before the law (ruling of 18 April 1996). The right of a person to apply to a court may not be limited or denied; otherwise, a threat would arise to one of the most significant values of a state under the rule of law.

The right of access to a court (Paragraph 1 of Article 30 of the Constitution)*The Constitutional Court's ruling of 17 August 2004*

Paragraph 1 of Article 30 of the Constitution provides that a person whose constitutional rights or freedoms are violated has the right to apply to a court.

In a state under the rule of law, everyone is given the possibility of defending their rights in a court against unlawful actions of other persons and those of state institutions or officials (ruling of 1 October 1997). Under Paragraph 1 of Article 30 of the Constitution, a person must be guaranteed the right to an independent and impartial arbiter of a dispute, who would settle a legal dispute on its merits on the basis of the Constitution and laws; each person has this right; the defence of violated rights in a court is guaranteed to persons regardless of their legal status; the violated rights and legitimate interests of persons must be defended in a court irrespective of whether or not they are directly established in the Constitution; the rights of a person must be defended not formally, but in reality and effectively against unlawful actions of private persons, as well as against those of state institutions or their officials (rulings of 1 October 1997, 8 May 2000, and 12 July 2001). The guarantee of the judicial protection of the rights and freedoms of persons is a guarantee of a procedural nature and an essential element of the constitutional institution of the rights and freedoms of persons (ruling of 30 June 2000), as well as a necessary condition for administering justice and an inseparable element of the content of the constitutional principle of a state under the rule of law.

The right to apply to a court is absolute (ruling of 30 June 2000). It is not permitted to limit or deny this right. Under the Constitution, the legislature has the duty to lay down such a legal regulation on the basis of which all disputes concerning the violation of the rights and freedoms of persons could be resolved in a court. A prelitigation procedure for settling disputes may also be provided for in legal acts. However, it is not permitted to establish any such a legal regulation that would deny the right of a person who believes that his/her rights or freedoms are violated to defend his/her rights or freedoms in a court (rulings of 2 July 2002 and 4 March 2003).

The right of access to a court (Paragraph 1 of Article 30 of the Constitution)*The Constitutional Court's ruling of 16 January 2006*

The provision of Paragraph 1 of Article 30 of the Constitution, according to which a person whose constitutional rights or freedoms are violated has the right to apply to a court, means that, in Lithuania, as in a state under the rule of law, everyone must be given the possibility of defending their rights in a court against unlawful actions of other persons, as well as against those of state institutions or officials (rulings of 1 October 1997, 4 March 2003, and 17 August 2004). A person is guaranteed the right to an independent and impartial arbiter of a dispute, who would settle a legal dispute on its merits on the basis of the Constitution and laws; each person who believes that his/her rights or freedoms are violated has the right to defend his/her rights and freedoms in a court – the implementation of the right to apply to a court is determined by the fact that the person himself/herself understands that his/her rights or freedoms are violated; the defence of violated rights in a court is guaranteed to persons regardless of their legal status; the violated rights, *inter alia*, acquired rights, and legitimate interests of a person must be defended in a court regardless of whether they are directly consolidated in the Constitution; the rights of a person must be defended not formally, but in reality and effectively against unlawful actions of private persons, as well as against those of state institutions or officials (rulings of 1 October 1997, 8 May 2000, 12 July 2001, 17 August 2004, and 7 February 2005). The constitutional right of a person to apply to a court, when interpreted in the context of other provisions of the Constitution, also implies that a law must establish such a legal regulation that would make it possible to file an appeal with a court of at least one higher instance against a final act adopted by a first instance general jurisdiction court or specialised court established under Paragraph 2 of Article 111 of the Constitution.

The guarantee of the judicial protection of the rights and freedoms of a person is a guarantee of a procedural character, an essential element of the constitutional institution of the rights and freedoms of the person and an inseparable element of the content of the constitutional principle of a state under the rule of

law (rulings of 30 June 2000, 17 August 2004, and 13 December 2004). The right of a person to apply to a court also implies his/her right to the due process of law (rulings of 13 December 2004 and 29 December 2004).

The right to apply to a court is absolute; the constitutional right of a person to apply to a court cannot be artificially restricted and the implementation of this right may not be unreasonably burdened (rulings of 30 June 2000, 17 August 2004, 13 December 2004, and 7 February 2005). Otherwise, it would have to be stated that this constitutional right is a mere declaration (rulings of 14 February 1994 and 22 February 2001).

Thus, under the Constitution, the legislature has the duty to lay down, by means of a law, such a legal regulation on the basis of which all disputes concerning the violation of the rights and freedoms and acquired rights of a person could be resolved in a court (rulings of 2 July 2002, 4 March 2003, 17 August 2004, 29 December 2004, and 7 February 2005). At the same time, it needs to be noted that the constitutional right of a person to apply to a court cannot be interpreted as meaning that, purportedly, the legislature may establish only such a legal regulation under which a person seeking to defend his/her rights and freedoms that, in his/her opinion, have been violated would be able in all situations to apply to a court only directly. In its acts, the Constitutional Court has held on more than one occasion that legal acts can also establish a prelitigation procedure for settling disputes; however, it is not permitted to establish any such a legal regulation that would deny the right of a person who believes that his/her rights or freedoms are violated to defend his/her rights or freedoms in a court (rulings of 2 July 2002, 4 March 2003, 17 August 2004, 29 December 2004, and 7 February 2005).

The right of access to a court in criminal proceedings (i.e. the right of persons who believe that their rights have been violated because of a criminal act to defend their rights in a court) (Paragraph 1 of Article 30 of the Constitution)

See 3. Legal responsibility, 3.2. Criminal proceedings, the ruling of 16 January 2006.

The right of a party to a case to request the court that considers the case to apply to the Constitutional Court

The Constitutional Court's ruling of 28 March 2006

Interpreting Paragraph 2 of Article 6 and Paragraph 1 of Article 30 of the Constitution in the context of Paragraph 1 of Article 109 and Article 110 of the Constitution, as well as in the context of the constitutional principle of a state under the rule of law, it needs to be noted that the right of each person to defend his/her rights on the basis of the Constitution and the right of a person whose constitutional rights or freedoms are violated to apply to a court also imply that each party to a case under consideration by a court, when such a party has doubts regarding the compliance of a law or another legal act (part thereof) with the Constitution (with another higher-ranking legal act) where such a law or another legal act (part thereof) may be applied in that case and where an investigation into its compliance with the Constitution (with another higher-ranking legal act) falls within the jurisdiction of the Constitutional Court (i.e. when such a party doubts the compliance of a certain act (part thereof) of the Seimas, the President of the Republic, or the Government or an act (part thereof) adopted by referendum with the Constitution (with another higher-ranking legal act)), has the right to apply to the respective court of general jurisdiction or specialised court (established under Paragraph 2 of Article 111 of the Constitution) that is considering the case and request such a court to suspend the consideration of the case and to apply to the Constitutional Court with a petition to investigate and decide whether the legal act (part thereof) that was passed by the Seimas, the President of the Republic, or the Government or adopted by referendum and is applicable in the case is in conflict with a higher-ranking legal act, *inter alia* (and, first of all), with the Constitution.

The right to the judicial protection of the rights and freedoms of a person that are violated by the inaction of law-making subjects (non-adoption of law-making decisions)

The Constitutional Court's decision of 8 August 2006

The jurisprudence of the Constitutional Court has more than once pointed to the imperative, arising from the constitutional principle of a state under the rule of law and other provisions of the Constitution (*inter alia*, from Paragraph 1 of Article 30 of the Constitution, whereby a person whose constitutional rights or freedoms are violated has the right to apply to a court), according to which a person who believes that his/her rights or freedoms are violated has the absolute right to access an independent and impartial court – an arbiter, which would settle a dispute. ... If the constitutional right of persons to apply to a court were not ensured, the universally recognised legal principle of *ubi ius, ibi remedium* – if there is a certain right (freedom), there must be a measure for its protection – would also be disregarded. Under the Constitution, a legal situation where it is impossible to defend a certain right or freedom of persons (also before a court), even though those persons believe that such a right or freedom has been violated, is impermissible; the Constitution does not tolerate such a legal situation.

Therefore, the fact that the subjects specified in the Constitution may not challenge before the Constitutional Court such failure of a law-making subject to act where the said law-making subject has not passed a legal act (acts) (parts thereof) to establish a new (different) legal regulation harmonised with a higher-ranking legal act, *inter alia*, with the Constitution, in order to replace a legal regulation ruled by the Constitutional Court to be in conflict with a higher-ranking legal act, *inter alia*, with the Constitution, and where the Constitutional Court has no powers to investigate failure to adopt such law-making decisions, does not mean that the aforementioned persons cannot altogether defend their rights and freedoms (also before a court) that have been violated because the aforementioned law-making decisions have not been adopted. The general legal principle of *ubi ius, ibi remedium*, the provision of Paragraph 1 of Article 6 of the Constitution, whereby the Constitution is a directly applicable act, the constitutional principle of responsible governance, the provision of Paragraph 3 of Article 5 of the Constitution, according to which state institutions serve the people, the provision of Article 18 of the Constitution, whereby human rights and freedoms are innate, as well as the constitutional right of a person who believes that his/her constitutional rights or freedoms are violated to apply to a court, imply not only that, in such cases, the rights, freedoms, legitimate interests, and legitimate expectations must and may be defended by means of interpreting the Constitution and by directly applying its provisions, but also that such protection must be guaranteed by courts.

The right of a party to a case to request the court that is considering the case to apply to the Constitutional Court or the respective administrative court

The Constitutional Court's ruling of 24 October 2007

... the right of each person to defend his/her rights on the basis of the Constitution and the right of a person whose constitutional rights or freedoms are violated to apply to a court also imply that each party to a case under consideration by a court, when such a party has doubts regarding the compliance of a law or another legal act (part thereof) with the Constitution (with another higher-ranking legal act) where such a law or another legal act (part thereof) may be applied in that case and where an investigation into its compliance with the Constitution (with another higher-ranking legal act) falls within the jurisdiction of the Constitutional Court (i.e. when such a party doubts the compliance of a certain act (part thereof) of the Seimas, the President of the Republic, or the Government or an act (part thereof) adopted by referendum with the Constitution (with another higher-ranking legal act)), has the right to apply to the respective court of general jurisdiction or specialised court (established under Paragraph 2 of Article 111 of the Constitution) that is considering the case and request such a court to suspend the consideration of the case and to apply to the Constitutional Court with a petition to investigate and decide whether the legal act (part thereof) that was passed by the Seimas, the President of the Republic, or the Government or adopted by referendum and is applicable in the case is in conflict with a higher-ranking legal act, *inter alia* (and, first of all), with the Constitution; this is also *mutatis mutandis* applicable to those legal situations where a certain party to a case under consideration by a court has doubts regarding the compliance of a legal act (part thereof) with the Constitution (with another higher-ranking legal act) where such a legal act (part thereof) may be applied in that case and where an investigation into its compliance with the Constitution

(with another higher-ranking legal act) does not fall within the jurisdiction of the Constitutional Court (i.e. the said act was not passed by the Seimas, the President of the Republic, or the Government or it was not adopted by referendum) – the said party, under the Constitution ... has the right to request the court considering its case to apply to the respective administrative court regarding the compliance of such a legal act (part thereof) with the Constitution (with another higher-ranking legal act) ...

The right to file an appeal against a final act of a court of first instance

The Constitutional Court's ruling of 24 January 2008

... as it has been held by the Constitutional Court, the constitutional right of a person to apply to a court and the instance system of courts imply that a law must establish such a legal regulation that would make it possible to file an appeal with a court of at least one higher instance against a final act adopted by a first instance general jurisdiction court or specialised court established under Paragraph 2 of Article 111 of the Constitution (rulings of 16 January 2006, 28 March 2006, 21 September 2006, 27 November 2006, and 24 January 2007). Justice is always administered by leaving the possibility of rectifying a possible mistake or changing a judgment in the light of new circumstances (ruling of 9 December 1998). The Constitutional Court has held that a law must establish not only the right of a party to the proceedings to file an appeal with a court of at least one higher instance against a final act adopted by a court of first instance, but also it must establish the procedure for filing such an appeal; such a procedure must allow correcting the possible mistakes made by a court of first instance; otherwise, the constitutional principle of a state under the rule of law would be deviated from and the constitutional right of a person to the due court process would be violated (rulings of 21 September 2006 and 24 October 2007); the said correction of mistakes made by courts of lower instance and the related prevention of injustice is the *conditio sine qua non* for the trust of the parties to the respective case and society in general not only in the court of general jurisdiction that is considering the respective case, but also in the whole system of courts of general jurisdiction (ruling of 28 March 2006).

... the purpose of the institution of filing an appeal against a final act of a court of first instance is not only the defence and protection of the rights of a person (convict) who has been brought to legal responsibility, but also the defence and protection of the rights and legitimate interests of other persons, *inter alia*, a victim, as well as the defence and protection of the public interest and the legal order of the state.

The right to the judicial protection of the rights and freedoms of a person that are violated by the activity (or inaction) of the President of the Republic or the Government

The Constitutional Court's ruling of 13 May 2010

The constitutional principle of judicial protection is consolidated in Paragraph 1 of Article 30 of the Constitution. ...

[...]

Paragraph 1 of Article 30 of the Constitution should be interpreted in conjunction with Paragraph 2 of the same article, in which it is prescribed that compensation for material and moral damage inflicted on a person is established by law. ...

[...]

It needs to be noted that the provisions of Article 30 of the Constitution should be interpreted in conjunction with other provisions of the Constitution, *inter alia*, with Paragraph 1 of Article 109 thereof, whereby, in the Republic of Lithuania, justice is administered only by courts, and with Paragraph 1 of Article 29 thereof, according to which all persons are equal before the law, the court, and other state institutions and officials.

[...]

... "... the fact that the subjects specified in the Constitution may not challenge before the Constitutional Court such failure of a law-making subject to act where the said law-making subject has not passed a legal act (acts) (parts thereof) to establish a new (different) legal regulation harmonised with the

said higher-ranking legal act, *inter alia*, with the Constitution, in order to replace a legal regulation ruled by the Constitutional Court to be in conflict with a higher-ranking legal act, *inter alia*, with the Constitution, and where the Constitutional Court has no powers to investigate failure to adopt such law-making decisions, does not mean that the aforementioned persons cannot altogether defend their rights and freedoms (also before a court) that have been violated because the said law-making decisions have not been adopted. The general legal principle of *ubi ius, ibi remedium*, the provision of Paragraph 1 of Article 6 of the Constitution, whereby the Constitution is a directly applicable act, the constitutional principle of responsible governance, the provision of Paragraph 3 of Article 5 of the Constitution, according to which state institutions serve the people, the provision of Article 18 of the Constitution, whereby human rights and freedoms are innate, as well as the constitutional right of a person who believes that his/her constitutional rights or freedoms are violated to apply to a court, imply not only that, in such cases, the rights, freedoms, legitimate interests, and legitimate expectations must and may be defended by means of interpreting the Constitution and by directly applying its provisions, but also that such protection must be guaranteed by courts” (decision of 8 August 2006).

The aforesaid provisions of the constitutional doctrine formulated in the Constitutional Court’s decision of 8 August 2006 are also *mutatis mutandis* applicable to those legal situations where the rights and freedoms of a person are violated because of the fact that an act of the President of the Republic or an act of the Government has not been adopted, although the adoption of such an act is required by a certain higher-ranking legal act, *inter alia*, by the Constitution.

[...]

... the activities of the President of the Republic or the Government can also cause a violation of the rights or freedoms of a person, *inter alia*, such activities can inflict damage.

[...]

... administrative courts may consider cases concerning, *inter alia*, the result or consequence of the activities (failure to act) of the President of the Republic or the Government where such activities (failure to act) violated (could violate) the rights or freedoms of a person, *inter alia*, they may consider cases concerning compensation for damage.

The right to an advocate as a condition of the effective implementation of the right to judicial protection (Paragraph 1 of Article 30 and Paragraph 6 of Article 31 of the Constitution) (for more on the right to an advocate, see 2.1.5.2.3. The right to defence and the right to an advocate)

The Constitutional Court’s ruling of 9 June 2011

... the right of a person to apply to a court and the requirement, arising from the Constitution, *inter alia*, from the provisions of Paragraph 1 of Article 30 and Paragraph 6 of Article 31 thereof, to defend the rights of a person not formally, but in reality, and in an effective manner means, *inter alia*, that the legislature must establish such a legal regulation that would create the preconditions for the effectiveness of legal assistance rendered by an advocate, where a person has the right to make use of such legal assistance while protecting his/her violated rights and legitimate interests, *inter alia*, while applying to a court.

[...]

... an advocate, while being engaged in an independent professional activity and rendering legal assistance to a person whose rights and legitimate interests have been violated, helps to implement the constitutional right of such a person to judicial protection. Thus, the right of a person to have an advocate is one of the conditions for the effective implementation of the right of a person to judicial protection.

[...]

... the constitutional right to judicial protection and the right to have an advocate, which are consolidated in the Constitution, *inter alia*, in the provisions of Paragraph 1 of Article 30 and Paragraph 6 of Article 31 thereof, give rise to the duty of the legislature to establish such a legal regulation that would create the preconditions for a person who defends his/her violated rights and legitimate interests to make use of legal assistance rendered by an advocate. *Inter alia*, the legislature should provide for such rights of

advocates that would enable them to pursue their professional activity and to render effective legal assistance. It should be noted that the establishment of the rights of advocates is not an objective in itself – it is necessary to provide for such rights in order that advocates could effectively perform their professional activity and, having used all legitimate measures of defence, would help to secure the implementation of the right of a person to judicial protection, *inter alia*, that of the right to apply to a court.

The right to judicial protection (Paragraph 1 of Article 30 of the Constitution)

The Constitutional Court's ruling of 5 July 2013

The constitutional principle of judicial protection is consolidated in Paragraph 1 of Article 30 of the Constitution. ...

The Constitutional Court has held on more than one occasion that, under the Constitution, the legislature has the duty to lay down such a legal regulation on the basis of which all disputes concerning the violation of the constitutional rights and freedoms and acquired rights of a person could be resolved in a court (*inter alia*, the rulings of 2 July 2002, 4 March 2003, 29 December 2004, 7 February 2005, and 16 January 2006). The constitutional right of a person to apply to a court may not be interpreted as meaning that the legislature, purportedly, may not establish any such a legal regulation under which a person seeking to defend, in his/her opinion, his/her violated rights or freedoms would be allowed to apply to a court only in the manner provided for by means of a law. When fulfilling its constitutional duty to lay down such a legal regulation on the basis of which all disputes concerning the violation of the rights and freedoms of a person could be resolved in a court and by paying regard, *inter alia*, to the imperatives consolidated in Paragraph 2 of Article 29 and Paragraph 1 of Article 30 of the Constitution, the legislature may establish a procedure governing the constitutional right to apply to a court, *inter alia*, the conditions, time limits, and means of implementing this right, which are determined, *inter alia*, by the public interest; however, the legislature may not establish any such a legal regulation that would deny the right of a person to defend his/her rights or freedoms in a court where he/she believes that his/her rights or freedoms have been violated.

[...]

Paragraph 1 of Article 30 of the Constitution should be interpreted in conjunction with Paragraph 2 of the same article, in which it is prescribed that compensation for material and moral damage inflicted on a person is established by law. ...

When Paragraph 1 of Article 30 of the Constitution is interpreted in conjunction with Paragraph 2 of the same article ... it should be noted that the judicial awarding of damages is one of the means of the defence of violated rights or freedoms in a court.

The right to an advocate as a condition of the effective implementation of the right to judicial protection

See 2.1.5.2.3. The right to defence and the right to an advocate, the ruling of 9 July 2015 (“The right to an advocate; the duty of the state to ensure effective legal aid; financing state-guaranteed legal aid”).

The right of access to a court (on the right to apply to a court for the defence of the right of petition, also see 2.3. Political rights and freedoms, 2.3.6. The right of petition, the decision of 28 June 2016 (“The right to challenge before a court a decision, adopted by an institution of public power, not to deem an application to be a petition or to refuse to accept a petition for consideration”))

The Constitutional Court's decision of 28 June 2016

The Constitutional Court has formulated in its jurisprudence the extensive official constitutional doctrine of the right of access to a court and has revealed the constitutional imperatives that should be complied with in regulating particular relationships by means of legal acts.

The Constitutional Court has held that each person who believes that his/her rights or freedoms have been violated has the right to the judicial protection of his/her violated constitutional rights or freedoms; the defence of violated rights in a court is guaranteed to persons regardless of their legal status (*inter alia*,

the rulings of 17 August 2004, 13 May 2010, and 5 July 2013); the implementation of the right to apply to a court is determined by the fact that the person himself/herself understands that his/her rights or freedoms have been violated (rulings of 1 October 1997, 16 January 2006, and 28 March 2006). The guarantee of the judicial protection of the rights and freedoms of persons is an essential element of the constitutional institution of the rights and freedoms of persons (*inter alia*, the rulings of 30 June 2000 and 29 December 2004 and the decision of 3 July 2013). The rights of a person must be defended not formally, but in reality, and effectively against the unlawful actions of both private persons and state institutions (*inter alia*, the rulings of 8 May 2000 and 28 March 2006 and the decision of 3 July 2013).

In its rulings, the Constitutional Court has held that, if the constitutional right of persons to apply to a court were not ensured, the universally recognised legal principle of *ubi ius, ibi remedium* – if there is a certain right (freedom), there must be a measure for its protection – would also be disregarded; under the Constitution, a legal situation where it is impossible to defend a certain right or freedom of persons (also before a court), even though those persons believe that such a right or freedom has been violated, is impermissible; the Constitution does not tolerate such a legal situation (*inter alia*, the ruling of 21 January 2008, the decision of 16 April 2014, and the ruling of 19 November 2015).

The Constitutional Court has also held on more than one occasion that, in a democratic state, a court is the main institutional guarantee of human rights and freedoms (rulings of 18 April 1996, 2 July 2002, and 10 December 2012). Under the Constitution, the legislature has the duty to lay down such a legal regulation on the basis of which all disputes concerning the violation of the constitutional rights and freedoms of a person could be resolved in a court (*inter alia*, the rulings of 2 July 2002, 29 December 2004, and 5 July 2013). A prelitigation procedure for settling disputes may also be established (*inter alia*, the rulings of 2 July 2002, 29 December 2004, and 22 January 2008); however, the legislature is not permitted to establish any such a legal regulation that would deny the right of a person who believes that his/her rights or freedoms have been violated to defend his/her rights or freedoms in a court (*inter alia*, the decision of 31 January 2007 and the ruling of 5 July 2013).

The legal regulation that consolidates the procedure for implementing the right to the judicial protection of the rights and freedoms of a person must be in line with the constitutional requirement of legal clarity; the legislature must clearly establish, in laws, in what manner and at what court persons can file their applications in order that they could implement in reality their right to apply to a court regarding the violation of their rights and freedoms (*inter alia*, the rulings of 29 December 2004, 27 November 2006, and 13 May 2010). When complying with the constitutional principle of a state under the rule of law, the legislature has the discretion to establish at what court and under what procedure persons may file their applications regarding the defence of their violated rights and freedoms (ruling of 27 November 2006).

Paragraph 4 of Article 111 of the Constitution provides that the formation and competence of courts is established by the Law on Courts. When interpreting this constitutional provision, the Constitutional Court held that the Constitution not only obliges the legislature to lay down, by means of a law, the establishment and competence of all the courts of the Republic of Lithuania specified in Paragraph 1 of Article 111 of the Constitution, but it also *expressis verbis* consolidates the title of this law – the Law on Courts (rulings of 28 March 2006, 22 October 2007, and 15 November 2013); this imperative (which arises from the Constitution) of the legal regulation governing the activity of courts of general jurisdiction should also be *mutatis mutandis* applied to the legal regulation governing specialised courts, which are established under Paragraph 2 of Article 111 of the Constitution (ruling of 28 March 2006, the decision of 8 August 2006, and the ruling of 22 October 2007). At the same time, it was noted that, in itself, such a constitutional legal regulation does not mean that certain relationships connected with the said relationships may not altogether be regulated also by means of other laws; when regulating the aforesaid relationships by means of a law, the legislature must pay regard to the Constitution (rulings of 28 March 2006 and 15 November 2013).

[...]

... the fact that the constitutional right of persons has been violated by a legal act (i.e. by a certain act of the Seimas, the President of the Republic, or the Government) the investigation into the legality of which

falls, under the Constitution, within the exclusive competence of the Constitutional Court where those persons, under the Constitution, have no powers to directly initiate a constitutional justice case in the Constitutional Court for determining the legality of such an act, does not mean that such persons are not allowed altogether to defend (also before a court) their violated rights and freedoms. The Constitution consolidates the right of persons whose constitutional rights or freedoms have been violated to apply to a court. This right implies not only that, in such situations, the rights and freedoms of persons, their legitimate interests, and legitimate expectations must and may be defended, but also that courts (judges), while considering cases, have the duty to apply to the Constitutional Court where they face doubts regarding the compliance of an act (part thereof) adopted by the Seimas, the President of the Republic, or the Government with higher-ranking legal acts, *inter alia* (and, first of all), with the Constitution.

The duty of the state to ensure the provision of effective legal aid to persons to whom access to legal aid is particularly difficult due to financial reasons in those cases where the provision of effective legal aid is necessary in the interests of justice

See 2.1.5.2.2. The right to a fair trial, the ruling of 11 October 2018.

The right to judicial protection (Paragraph 1 of Article 30 of the Constitution)

The Constitutional Court's ruling of 14 December 2018

... the right of a person, as consolidated in Paragraph 1 of Article 30 of the Constitution, to apply to a court for the defence of violated rights or freedoms implies the legitimate expectation that the court, after an impartial and fair examination of the case, will adopt a reasoned and well-founded decision, *inter alia*, regarding the distribution of litigation costs. It should be noted that such a legal regulation that creates the preconditions for a court to adopt a fair, reasoned, and well-founded decision in the case also ensures the effective implementation of the constitutional right of the person to the judicial protection of his/her violated constitutional rights and freedoms.

... in order to ensure the effective implementation of the right of a person to the judicial protection of his/her violated constitutional rights and freedoms, it is imperative that a court, with a view to adopting a fair, reasoned, and well-founded decision in the case, in the event that it has doubts regarding the compliance of a legal act applicable in the case with higher-ranking legislation or has doubts regarding the interpretation or validity of the applicable European Union law, properly fulfils its constitutional duty to apply to the Constitutional Court or another court with jurisdiction for assessing whether a legal act applicable in the case is in compliance with higher-ranking legislation, or properly fulfils its constitutional duty to refer to the Court of Justice of the European Union for a preliminary ruling. No legal regulation governing the distribution of the costs incurred by the parties as a result of the above-mentioned application by the court may create the preconditions for the unjustified restriction of the right of a person, which is consolidated in Paragraph 1 of Article 30 of the Constitution, to apply to a court for the defence of his/her violated constitutional rights and freedoms.

The right to file an appeal against a final act of a court of first instance

The Constitutional Court's ruling of 1 March 2019

... under the Constitution, *inter alia*, Paragraph 1 of Article 30 thereof, and the constitutional principle of a state under the rule of law, the right to file an appeal with a court of at least one higher instance against a final act of a court of first instance in order to ensure the possibility of correcting potential mistakes is an inseparable part of the constitutional right to apply to a court and the right to due process. It is not allowed to artificially restrict or altogether deny the right to apply to a court of at least one higher instance for the assessment of the lawfulness and reasonableness of a decision adopted by a court of first instance, and no such legal regulation may be established that would disproportionately limit the right to apply to a court of higher instance for a person who believes that his/her rights or freedoms were not defended properly by a court of first instance.

... implementing the duty, which stems from the Constitution, *inter alia*, Paragraph 1 of Article 30 thereof, and the constitutional principle of a state under the rule of law, to ensure the possibility for the participants of the proceedings to verify the lawfulness and reasonableness of a decision of a court of first instance in a court of at least one higher instance, the legislature must establish such a legal regulation that would create the preconditions for a person to effectively exercise his/her right to file an appeal with the court of appeal instance against a decision that has been adopted by a court of first instance and has not come into force yet. This means that, when the procedure for filing an appeal with the court of appeal instance against a decision adopted by a court of first instance is established by means of a law, no such grounds, time limits, and conditions for filing an appeal may be provided for due to which it would become especially difficult to apply to the court of appeal instance or it would altogether be impossible to file an appeal with the court of appeal instance against a final act adopted in the respective case by a court of first instance. Otherwise, the constitutional right to file an appeal with the court of appeal instance against a decision of a court of first instance would be declaratory; correcting the potential mistakes made by the court of first instance, as well as applying law in a fair manner and administering justice, would be precluded; the constitutional right of a person to the due process of law would be violated; and the principle of a state under the rule of law would be deviated from.

The duty of the state to ensure effective legal aid in criminal and civil proceedings (Paragraph 1 of Article 30 and Paragraphs 2 and 6 of Article 31 of the Constitution)

See 2.1.5.2.3. The right to defence and the right to an advocate, the ruling of 1 March 2019 (“The right to an advocate; the duty of the state to ensure effective legal aid in criminal and civil proceedings (Paragraph 1 of Article 30 and Paragraphs 2 and 6 of Article 31 of the Constitution)”).

The right of a state servant (official) to apply to a court for the defence of his/her rights violated due to the application of official liability

See 4.3. State service, the ruling of 18 April 2019.

2.1.5.2.2. The right to a fair trial

The rights exercised in court proceedings by the persons participating in a case; the equality of arms between the parties

The Constitutional Court’s ruling of 18 April 1996

Courts administer justice, i.e. they resolve legal conflicts by adopting legal decisions. Justice is administered by applying special procedural forms the purpose of which is to ensure the rights of persons in court proceedings, to facilitate the establishment of the actual circumstances of a case, and to adopt a fair decision. ... In civil procedure, the principle of the equality of persons before the court manifests itself as the principle of the equality of arms between the parties. ... The dispute of equal parties in proceedings, where each party to the case has equal possibilities during the consideration of their case in a court, expresses the essence of civil procedure.

Assessing evidence in court proceedings

The Constitutional Court’s ruling of 18 April 1996

A court is not bound in advance by any evidence presented to it.

The equality of arms between the parties; courts as subjects of procedural legal relationships

The Constitutional Court’s ruling of 19 December 1996

... The procedural rights of parties are equal. The rights of one party correspond to those of the other party; for instance, the plaintiff is entitled to bring an action, while the defendant is entitled to defend

against the action brought by rebutting the claims of the plaintiff or by making counter-claims, etc. This principle is of great importance as only equal parties of a dispute may compete on equal terms. It is important that the principle of the equality of arms between the parties is observed in all stages of proceedings, since the implementation of other principles of proceedings also depends on the implementation of the principle of the equality of arms between the parties.

[...]

... the essence of the equality of the rights of the persons participating in a case is the equality of persons before the court, but not the equality between the court (judge) considering a dispute and the persons participating in the case. Otherwise, the nature of a court as an institution administering justice would be denied.

The judicial protection of rights and freedoms

The Constitutional Court's ruling of 1 October 1997

The judicial protection of rights and freedoms, unlike other ways of their protection, is characterised by such universally recognised democratic principles (equality before the court, publicity, the principle of adversarial argument, the right to be heard in a court, etc.) that are specific to this protection alone. A court obeys only the law and, in particular cases, adopts decisions in the name of the State of Lithuania (Paragraph 4 of Article 109 of the Constitution). The state guarantees the execution of a court decision adopted with respect to a concrete person.

When resolving a conflict, a court, as an institution of state power, adopts an act of justice. When adopting it, a court invokes special procedural rules. One of such rules prescribes that, in determining the rights and duties of a person, a court must present clear and convincing reasoning substantiating the adopted decision. If persons disagree with a court decision adopted with respect to them, the laws guarantee the possibility for them to appeal against the said decision in accordance with the hierarchical line, i.e. they are guaranteed the verification of the lawfulness and validity of the adopted decision at a court of higher instance.

The right to the due court process (Paragraph 2 of Article 31 of the Constitution)

The Constitutional Court's ruling of 5 February 1999

Paragraph 2 of Article 31 of the Constitution provides that a person charged with committing a crime has the right to a public and fair hearing of his/her case by an independent and impartial court. This constitutional provision consolidates the principle of the right of individuals to the due court process. The adherence to the said principle is a necessary condition for resolving a case in a fair manner. When the rights of persons in court proceedings are guaranteed, it is necessary to ensure, by means of legal norms, that proceedings are carried out fairly and professionally, that the rights of the parties to proceedings are respected, and that cases are considered by impartial judges.

[...]

The requirement by the Constitution that cases must be investigated in a fair manner implies that courts must correctly establish the actual circumstances of cases and that they must correctly apply criminal laws. Ensuring the impartiality of courts is one of the conditions for the fair consideration of a case. The same another condition would be the separation of the functions of subjects in procedural activities. Therefore, a case is justly investigated only if the constitutional principles of procedural activities are not violated and the rights of all participants in proceedings are ensured.

The right to a fair, independent, and impartial trial (Paragraph 2 of Article 31 of the Constitution)

The Constitutional Court's ruling of 12 February 2001

The constitutional right of persons to the hearing of their case by an impartial court also means that judges whose impartiality can raise doubts may not consider their case. Considering a case, a judge must be neutral. The impartiality and independence of a court are an essential guarantee of ensuring human rights

and freedoms, and are a necessary condition for the fair consideration of a case; consequently, this is also a necessary condition for trust in courts.

The principle of the independence of judges and courts, consolidated in the Constitution, and the right of persons to a fair and public hearing of their case by an independent and impartial court imply the duty of the state to lay down the guarantees for the independence of judges and courts.

The right to a fair trial (Paragraph 2 of Article 31 of the Constitution)

The Constitutional Court's ruling of 10 June 2003

... under Paragraph 2 of Article 31 of the Constitution, a person charged with committing a crime has the right to a public and fair hearing of his/her case by an independent and impartial court.

Paragraph 2 of Article 31 of the Constitution consolidates the right of a person to a fair, impartial, and independent trial. Interpreting Paragraph 2 of Article 31 in conjunction with Paragraph 4 of this article, according to which punishment may be imposed or applied only on the grounds established by means of a law, in the context of the case at issue, it should be noted that, under the Constitution, when considering a case and investigating all circumstances of the case, an independent and impartial court may not impose a punishment by failing to observe the law.

It should be noted that the constitutional right to a fair trial means, *inter alia*, not only that the principles and norms of criminal procedure law must be observed in court proceedings, but also that the punishment established in the penal law and imposed by a court must be just; the penal law must establish all possibilities for a court, after considering all circumstances of a case, to impose a just punishment on the person who committed a criminal act. The imposition of an unjust punishment would imply that the right of a person to a fair trial is violated; consequently, this would imply that Paragraph 2 of Article 31 of the Constitution and the constitutional principle of a state under the rule of law are also violated.

The right to the due court process (Paragraph 2 of Article 31 of the Constitution)

The Constitutional Court's ruling of 16 January 2006

The due court process is a necessary condition for resolving a case in a fair manner (ruling of 5 February 1999).

... the constitutional principle of a state under the rule of law implies the right of a person to the due process of law. The due process of law includes court proceedings. Thus, the constitutional principle of a state under the rule of law gives rise to the right of a person to the due court process.

Certain requirements for court proceedings stem from Paragraph 2 of Article 31 of the Constitution, which prescribes that a person charged with committing a crime has the right to a public and fair hearing of his/her case by an independent and impartial court.

The Constitutional Court has held that the principle of the right of a person to the due court process, as laid down in Paragraph 2 of Article 31 of the Constitution, means, *inter alia*, that a court must unconditionally adhere to the constitutional principles and the requirements of laws that consolidate the said principles as regards the equality of parties in criminal proceedings before the law and the court; a court must also be impartial and independent. These are the most important preconditions ensuring that the circumstances of a case are investigated thoroughly, completely, and objectively and that the truth is established, as well as that penal laws are applied correctly (ruling of 19 September 2000).

... Paragraph 2 of Article 31 of the Constitution and the principle of a state under the rule of law give rise to the right of a person to the due court process, which is an important condition for resolving a case in a fair manner; the said right means that, in criminal proceedings in a court, it is necessary to pay regard to the clarity of the proceedings, the equality of the rights of the participants of proceedings, their participation in the procedure of providing evidence, their right to an interpreter, the principle of adversarial argument, and other principles in order that the circumstances of committing a criminal act would be investigated comprehensively, objectively, and impartially and that a fair decision would be adopted in a criminal case. The Constitution obliges the legislature to establish, while regulating the relationships of

criminal proceedings, such a legal regulation that would also ensure the rights of participants in criminal proceedings: proceedings must be such that the effective protection of the rights of a person who has suffered from a criminal act would be ensured and that such a person would be able to make use of all rights arising from the Constitution. Criminal proceedings must also be such that the constitutional rights of a person suspected of committing a criminal act are not violated: the right to defence, the right to an advocate, the right to be informed about the accusation, etc. must be secured. The Constitutional Court has held that, when guaranteeing the rights of persons in court proceedings, it is necessary to ensure that proceedings are carried out fairly and professionally, that the rights of the parties to proceedings are respected, and that cases are considered by impartial judges (ruling of 5 February 1999).

The right to file an appeal against a final act of a court of first instance

See 2.1.5.2.1. The right of access to a court, the ruling of 24 January 2008.

The independence of judges and courts as a necessary condition for the protection of human rights and freedoms (Paragraph 2 of Article 31 and Paragraph 2 of Article 109 of the Constitution)

The Constitutional Court's ruling of 28 May 2008

Paragraph 2 of Article 31 and Paragraph 2 of Article 109 of the Constitution are interrelated, as they, *inter alia*, consolidate one of the most important principles of the administration of justice – the independence of courts and judges; under the Constitution, the independence of courts and judges is, first of all, a necessary condition for the protection of human rights and freedoms (ruling of 5 February 1999).

In the jurisprudence of the Constitutional Court (rulings of 6 December 1995, 21 December 1999, 12 February 2001, 12 July 2001, 13 May 2004, 16 January 2006, and other rulings), various aspects of the independence of judges and courts are revealed; the independence of judges and courts stems from the Constitution.

... the function of the administration of justice determines the independence of judges and courts (rulings of 12 July 2001 and 13 May 2004); the independence of judges and courts is one of the essential principles of a democratic state under the rule of law (rulings of 21 December 1999, 12 February 2001, and 13 May 2004); a judge can administer justice only while being independent of the parties to a case, state institutions, officials, political and public associations, natural and legal persons (rulings of 12 July 2001 and 13 May 2004); the independence of judges and courts is not a privilege, but one of the most important duties of judges and courts; the said duty stems from the constitutionally guaranteed right of a person to an independent and impartial arbiter of a dispute; the independence of judges and courts is a necessary condition for an impartial and fair consideration of a case; therefore, the independence of judges and courts is also a condition for trust in courts (rulings of 6 December 1995, 21 December 1999, 12 February 2001, 9 May 2006, and 22 October 2007).

The right to the due court process (Paragraph 2 of Article 31 and Paragraph 1 of Article 109 of the Constitution)

The Constitutional Court's ruling of 28 May 2008

The due court process is a necessary condition for resolving a case in a fair manner (ruling of 5 February 1999).

The Constitutional Court has held that the principle of the right of a person to the due court process, as laid down in Paragraph 2 of Article 31 of the Constitution, means, *inter alia*, that a court must unconditionally adhere to the constitutional principles and the requirements of laws that consolidate the said principles as regards the equality of parties in criminal proceedings before the law and the court; a court must also be impartial and independent. These are the most important preconditions ensuring that the circumstances of the case are investigated thoroughly, completely, and objectively and that the truth is

established, as well as that penal laws are applied correctly (rulings of 19 September 2000 and 16 January 2006). In criminal proceedings in a court, regard must be paid to the clarity of the process, the equal rights of the participants of proceedings, their participation in the procedure of providing evidence, their right to an interpreter, the principle of adversarial argument, and other principles in order that the circumstances of committing a criminal act would be investigated comprehensively, objectively, and impartially and a fair decision would be adopted in a criminal case (ruling of 16 January 2006).

The Constitutional Court has also held the following.

In criminal procedure law, the provision of Paragraph 1 of Article 109 of the Constitution, whereby only courts administer justice, means, *inter alia*, that a court in criminal proceedings must be an impartial arbiter, who objectively assesses the data (evidence) in a criminal case regarding the circumstances of committing a criminal act and who adopts a fair decision concerning the guilt of a person accused of having committed a criminal act; at the same time, in order to establish the objective truth, a court must take an active part in criminal proceedings – a court must define the limits of the consideration of a criminal case, perform certain procedural actions, and ensure that persons participating in court proceedings do not abuse their rights or powers, and it must resolve other issues related to the consideration of a criminal case in a court. While considering a criminal case, a court must act in such a way that the objective truth is established in a criminal case and the question of the guilt of a person accused of having committed a criminal act is fairly resolved. A court must also be equally just to all persons who participate in criminal proceedings (ruling of 16 January 2006).

When investigating a criminal case, without overstepping the limits defined in the Constitution and laws, a court is independent throughout the entire criminal proceedings. From the point of view of the independence of a court, the fact, as such, that a court abides by the respective norms of [criminal procedure law] does not mean that the independence of such a court is denied. As noted by the Constitutional Court, the constitutional right to a fair trial means, *inter alia*, that the principles and norms of criminal procedure law must be observed in court proceedings (ruling of 10 June 2003).

The norms and principles consolidated in the Constitution, *inter alia*, the right of persons to a public and fair hearing of their case by an independent court, as consolidated in Paragraph 2 of Article 31 of the Constitution, as well as the principles of a state under the rule of law and justice, imply the model of a court as an institution administering justice where a court may not be understood as a “passive” observer of court proceedings and where the administration of justice may not depend solely on the material submitted to a court. Seeking to investigate all circumstances of a case objectively and comprehensively and to establish the truth in a case, a court has the powers either to perform procedural actions by itself or to assign certain institutions (officials), *inter alia*, prosecutors, to perform the respective actions (ruling of 16 January 2006); when performing procedural actions, a court must be impartial and act in such a way that would not create any preconditions for doubting its impartiality or independence.

Judicial control over the enforcement procedure

The Constitutional Court's ruling of 30 June 2008

... In order to ensure the lawfulness of the enforcement procedure, it is necessary to consolidate effective judicial control over the enforcement procedure (there may be various forms of such control), by exercising which, a court could resolve all questions (disputes) arising during such an enforcement procedure. The main purpose of such control is to ensure the lawfulness and effectiveness of the enforcement procedure, as well as the defence of violated rights of a person.

[...]

While regulating the relationships linked to the enforcement procedure, law-making subjects must comply with the constitutional requirement for the due process of law, *inter alia*, it is necessary to ensure judicial control over the enforcement procedure, as well as the imperative of the constitutional right of a person to judicial protection.

The right to the due court process (for more on the principle of the public consideration of cases in a court, see 9.1. Courts, 9.1.6. Court proceedings and court decisions, the ruling of 6 December 2012 (“The principle of the public consideration of cases in a court (Paragraph 1 of Article 117 of the Constitution)”)

The Constitutional Court’s ruling of 6 December 2012

The due court process is a necessary condition for resolving a case in a fair manner (rulings of 5 February 1999, 16 January 2006, 28 May 2008, and 8 June 2009).

The constitutional right of a person to the due court process implies the duty of the legislature to establish, by means of a law, such proceedings for consideration of cases in a court that would be in line with the norms and principles of the Constitution. The legislature, when regulating, by means of a law, the relationships of the consideration of cases in a court, must pay regard to the Constitution, *inter alia*, to the principles laid down in Article 117 thereof, as well as to the constitutional principles of a state under the rule of law, the equality of rights and justice, and the impartiality and independence of judges.

When the relationships of the consideration of cases in a court are regulated, regard must be paid, *inter alia*, to the principle of the public consideration of cases in a court, as consolidated in Paragraph 1 of Article 117 of the Constitution.

The right to a fair trial (Paragraph 2 of Article 31 of the Constitution)

The Constitutional Court’s ruling of 15 November 2013

Paragraph 2 of Article 31 of the Constitution prescribes: “A person charged with committing a crime shall have the right to a public and fair hearing of his case by an independent and impartial court.”

This constitutional provision consolidates the principle of the right of a person to the due court process. The adherence to this principle is a necessary condition for resolving a case in a fair manner. When interpreting this principle, the Constitutional Court noted, *inter alia*, the following (*inter alia*, the rulings of 5 February 1999, 19 September 2000, 12 February 2001, 10 June 2003, 16 January 2006, 28 May 2008, and 8 June 2009):

- the requirement of the Constitution that cases must be considered in a fair manner implies that courts must correctly establish the actual circumstances of cases and that they must correctly apply criminal laws; ensuring the impartiality of courts is one of the conditions for considering a case in a fair manner;

- a person may not be recognised guilty of committing a crime, nor any criminal punishment may be imposed on anyone, without proper court proceedings, enabling the accused to be aware of everything with which he/she is charged and on what grounds the accusations against him/her are based, as well as allowing him/her to prepare and present evidence for his/her defence; this must be ensured by means of criminal procedure norms, which must be in conformity with the constitutional principles of lawfulness, the equality before the law and the court, the impartiality of courts and judges, and the public and fair consideration of cases; the participants of trials – the accuser, the accused, counsel for the defence, the victim and his/her representative, the civil plaintiff and the civil defendant and their representatives – must be guaranteed, by means of laws, the equal rights to present evidence, to take part in the investigation into evidence, and to submit requests; cases must be considered on the basis of the principle of adversarial argument;

- criminal procedure must ensure that the constitutional rights of persons suspected or accused of having committed a criminal act are not violated: their right to defence, the right to an advocate, the right to be aware of what he/she is charged with, etc. must be ensured;

- the constitutional right to a fair trial, *inter alia*, means not only that the principles and norms of criminal procedure law must be observed in court proceedings, but also that the punishment established in the penal law and imposed by a court must be just; the penal law must establish all possibilities for a court, after considering all circumstances of a case, to impose a just punishment on the person who committed a criminal act; the imposition of an unjust punishment would imply that the right of a person to a fair trial is violated; consequently, in such a case, Paragraph 2 of Article 31 of the Constitution and the constitutional principle of a state under the rule of law would also be violated;

- the norms and principles consolidated in the Constitution, *inter alia*, the right of persons to a public and fair hearing of their case by an independent court, as consolidated in Paragraph 2 of Article 31 of the

Constitution, as well as the principles of a state under the rule of law and justice, imply the model of a court as an institution administering justice where a court may not be understood as a passive observer of court proceedings and where the administration of justice may not depend solely on the material submitted to a court; seeking to investigate all circumstances of the case objectively and comprehensively and to establish the truth in a case, a court has the powers either to perform procedural actions by itself or to assign certain institutions (officials), *inter alia*, prosecutors, to perform the respective actions; when performing procedural actions, a court must be impartial and act in such a way that would not create any preconditions for doubting its impartiality or independence.

[...]

Under Paragraph 1 of Article 109 of the Constitution and the constitutional principles of a state under the rule of law and justice, courts have the duty not only to investigate all circumstances of criminal cases in an exhaustive and impartial manner, but also to correctly apply criminal laws, *inter alia*, to properly qualify a criminal act committed by the accused. A court must investigate whether a criminal act specified in the indictment was committed precisely under the essential circumstances specified in the indictment, with the exception of situations where the prosecutor, the private accuser, or the victim submit the request that the factual circumstances of the committed act specified in the indictment be changed to circumstances that are different in substance. ...

... under the Constitution, *inter alia*, Paragraph 2 of Article 31 and Paragraph 1 of Article 109 thereof, and under the constitutional principles of a state under the rule of law and justice, the possibilities must be created for a court considering a criminal case to change, on its own initiative, the factual circumstances of the committed act specified in the indictment to circumstances that are different in substance. While implementing this right, a court must inform the accused and other participants of the court trial about such a possibility and must ensure the right to be aware of what the accusation is, the right to defence, and the implementation of other constitutional principles of the due process of law.

The duty of the state to ensure the provision of effective legal aid to persons to whom access to legal aid is particularly difficult due to financial reasons in those cases where the provision of effective legal aid is necessary in the interests of justice

The Constitutional Court's ruling of 11 October 2018

... the duty of the state to ensure the provision of effective legal aid in those cases where this is necessary in the interests of justice, as implied by the Constitution, *inter alia*, the right of a person to apply to a court, provided for in Paragraph 1 of Article 30 of the Constitution, the imperative of a fair hearing of a case by an independent and impartial court, guaranteed in Paragraph 2 of Article 31 of the Constitution, and the constitutional principle of a state under the rule of law, *inter alia*, means that the legislature must establish such a model of organising, providing, and funding legal aid under which persons to whom access to such aid is particularly difficult due to financial reasons are provided with legal aid on the basis of the criteria such as the complexity of the case or applicable law, the severity of the possible punishment, the gravity of the criminal act, certain particularities of the social and personal situation of the person, and other significant circumstances. It should also be noted that the obligation – as implied by the constitutional duty of the state to ensure the effective provision of legal aid – to responsibly plan, accumulate, and use the funds necessary for this gives rise, *inter alia*, to the right of the legislature to establish such a model of organising, providing, and funding legal aid under which it is required that, upon the closure of the legal proceedings, the person pays, in full or in part, the costs of the legal aid provided to him/her and financed by means of public funds if his/her financial situation improves and he/she is able to pay them. Thus, the legislature may also establish such a legal regulation under which legal aid in certain cases is not provided to persons who have not fulfilled the duty established in the law to pay, in full or in part, the costs of the legal aid provided to them in other proceedings; however, such a legal regulation may not, in any case, deny the right of a person to apply to a court and the right to the due process of law, which are consolidated in Paragraph 1 of Article 30 and Paragraph 2 of Article 31 of the Constitution, i.e. no preconditions may

be created for disregarding the interests of justice, among other things, where access to legal aid would be particularly difficult for a certain person due to financial reasons.

The right to file an appeal against a final act of a court of first instance

See 2.1.5.2.1. The right of access to a court, the ruling of 1 March 2019.

The duty of the state to ensure effective legal aid in criminal and civil proceedings (Paragraph 1 of Article 30 and Paragraphs 2 and 6 of Article 31 of the Constitution)

See 2.1.5.2.3. The right to defence and the right to an advocate, the ruling of 1 March 2019 (“The right to an advocate; the duty of the state to ensure effective legal aid in criminal and civil proceedings (Paragraph 1 of Article 30 and Paragraphs 2 and 6 of Article 31 of the Constitution)”).

2.1.5.2.3. The right to defence and the right to an advocate

The right to defence and the right to an advocate; the requirement for advocates to have higher university education in law

The Constitutional Court’s ruling of 10 July 1996

The right to defence and the right to have an advocate are found among the fundamental human rights. The right to defence and the right to have an advocate help to ensure the freedom and inviolability of a person, as well as the protection of other constitutional rights and freedoms. The implementation of the constitutional right to defence is particularly dependent on the level of the professional training of an advocate, i.e. on the qualifications acquired by such a lawyer and the skills developed during his/her legal practice. ...

... The Constitutional Court has recognised that, in general, [the fact that lawyers who work as advocates are required to receive broadly-based legal training, which can be ensured only by higher university education in law], may be treated as increased requirements for educational qualifications for the lawyers of this profession. However, establishing such requirements is aimed at ensuring that residents are rendered more qualified legal aid, i.e. it is aimed at strengthening the protection and defence guarantees of human rights and freedoms.

The right to defence (Paragraph 6 of Article 31 of the Constitution)

The Constitutional Court’s ruling of 19 September 2000

Paragraph 6 of Article 31 of the Constitution prescribes: “A person suspected of committing a crime, as well as the accused, shall be guaranteed, from the moment of his apprehension or first interrogation, the right to defence, as well as the right to an advocate.” The right of persons to defence guaranteed in this constitutional norm implies that a law must ensure that they have sufficient procedural means to defend themselves from charges against them and that they have the possibility of making use of these means. The right to defence is one of the conditions for considering a case in a fair manner. By guaranteeing the right of persons to defence, the preconditions are created to justly punish everyone who has committed a crime and to ensure that no innocent person is held criminally liable and convicted.

The right to defence and the right to an advocate (Paragraph 6 of Article 31 of the Constitution)

The Constitutional Court’s ruling of 12 February 2001

Paragraph 6 of Article 31 of the Constitution prescribes: “A person suspected of committing a crime, as well as the accused, shall be guaranteed, from the moment of his apprehension or first interrogation, the right to defence, as well as the right to an advocate.”

The right to an advocate, consolidated in Paragraph 6 of Article 31 of the Constitution, means that a person has the right to choose an advocate, as well as the right to have an advocate appointed by the state.

The right of a person to have an advocate also implies the right of a person to be clearly informed that he/she is entitled to have an advocate from the moment of his/her apprehension or first interrogation.

It should be noted that the right of persons to defence and their right to an advocate, which are laid down in Paragraph 6 of Article 31 of the Constitution, are absolute: these rights may not be denied or restricted on any grounds or any conditions.

The right of a person suspected of committing a crime, as well as that of the accused, to defence is one of the guarantees of human rights protection. This right is a necessary condition in order that every person who committed a crime would be justly punished and that an innocent person would not be held criminally liable and convicted.

[...]

The right to defence and the right to have an advocate, which are consolidated in Paragraph 6 of Article 31 of the Constitution, give rise to the duty of the legislature to particularise, in laws, the implementation of the constitutional right of persons to judicial protection. When it establishes such a legal regulation, the legislature is bound by the Constitution. The constitutional right to defence and the right to have an advocate also give rise to the duty of state institutions to ensure the real possibility for the implementation of these rights.

It needs to be noted that the right to choose an advocate, unlike the right to have an advocate, is not absolute. For instance, an advocate may not act simultaneously as counsel for the defence of two or more persons suspected of committing a crime or of two or more of the accused in cases where the interests of the defence of one of such persons are in conflict with those of the other. Laws may provide that, in cases where the exercise of defence by a person faces real difficulties, a court may propose that a person choose a different advocate.

The right to defence and the right to an advocate; the right of an advocate to receive information that is necessary for the effective implementation of the right of persons to judicial protection (Paragraph 1 of Article 30 and Paragraph 6 of Article 31 of the Constitution)

The Constitutional Court's ruling of 9 June 2011

The right to have an advocate as a condition for the effective implementation of the right to judicial protection stems not only from Paragraph 6 of Article 31 of the Constitution, but also from Paragraph 1 of Article 30 thereof, which prescribes that "A person whose constitutional rights or freedoms are violated shall have the right to apply to a court".

[...]

... the right of a person to apply to a court and the requirement, arising from the Constitution, *inter alia*, from the provisions of Paragraph 1 of Article 30 and Paragraph 6 of Article 31 thereof, to defend the rights of a person not formally, but in reality, and in an effective manner means, *inter alia*, that the legislature must establish such a legal regulation that would create the preconditions for the effectiveness of legal assistance rendered by an advocate where a person has the right to make use of such legal assistance in protecting his/her violated rights and legitimate interests, *inter alia*, while applying to a court.

The Constitutional Court has held that the activities of an advocate constitute certain independent professional activities of a person that are related to rendering the respective legal services (ruling of 14 February 2011).

... an advocate, while being engaged in an independent professional activity and rendering legal assistance to a person whose rights and legitimate interests are violated, helps to implement the constitutional right of such a person to judicial protection. Thus, the right of a person to have an advocate is one of the conditions for the effective implementation of the right of a person to judicial protection.

The Constitutional Court has held that the constitutional right to defence and the right to have an advocate give rise to the duty of the legislature to particularise, in laws, the implementation of the constitutional right of persons to judicial protection. When it establishes such a legal regulation, the legislature is bound by the Constitution. The constitutional right to defence and the right to have an

advocate also give rise to the duty of state institutions to ensure the real possibility for the implementation of these rights (ruling of 12 February 2001).

It should be noted that the constitutional right to judicial protection and the right to have an advocate, which are consolidated in the Constitution, *inter alia*, in the provisions of Paragraph 1 of Article 30 and Paragraph 6 of Article 31 thereof, give rise to the duty of the legislature to establish such a legal regulation that would create the preconditions for a person who defends his/her violated rights and legitimate interests to make use of legal assistance rendered by an advocate; *inter alia*, the legislature must provide for such rights of advocates that would enable them to pursue their professional activity and to render effective legal assistance. It should be noted that the establishment of the rights of advocates is not an objective in itself – it is necessary to provide for such rights in order that advocates could effectively perform their professional activity and, having used all legitimate measures of defence, would help to ensure the implementation of the right of a person to judicial protection, *inter alia*, the implementation of the right to apply to a court.

... in order to ensure the right of a person to have an advocate as one of the conditions for the effective implementation of the right to judicial protection, the legislature must establish, *inter alia*, such a legal regulation whereby an advocate could receive all information that is held by state and municipal institutions and is necessary for the implementation of the said right of a person.

On the other hand, under the Constitution, *inter alia*, Article 22 and Paragraph 3 of Article 25 thereof, it is not allowed to establish any such a legal regulation governing the provision of information held by state and municipal institutions to advocates that would create the preconditions for violating the values protected under the Constitution, *inter alia*, the inviolability of the private life of individuals.

It also needs to be noted that the right to have an advocate, which is consolidated in the Constitution, *inter alia*, in the provisions of Paragraph 1 of Article 30 and Paragraph 6 of Article 31 thereof, gives rise to the duty of the legislature to establish not only certain rights of advocates, which are necessary in order to render effective legal assistance, but also their respective duties, *inter alia*, the duty of confidentiality, which means that an advocate must safeguard the information that is entrusted to him/her and is necessary for rendering legal assistance and that he/she must not disclose it, as well as the duty not to use the received information for purposes contrary to law; at the same time, it needs to be noted that the responsibility of advocates must also be established, *inter alia*, for the unlawful use of the received information.

The right to an advocate; the duty of the state to ensure effective legal aid; the financing of state-guaranteed legal aid

The Constitutional Court's ruling of 9 July 2015

The Constitutional Court has ... noted that an advocate, while performing an independent professional activity and rendering legal assistance to a person whose rights and legitimate interests have been violated, helps to implement the constitutional right of a person to judicial protection. The right of a person to have an advocate is one of the conditions for the effective implementation of the right of a person to judicial protection (ruling of 9 June 2011).

In the acts of the Constitutional Court, it has also been held that the constitutional right to defence and the right to have an advocate give rise to the duty of the legislature to particularise, in laws, the implementation of the constitutional right of persons to judicial protection. When it establishes such a legal regulation, the legislature is bound by the Constitution. The constitutional right to defence and the right to have an advocate also give rise to the duty of state institutions to ensure the real possibility for the implementation of these rights (rulings of 12 February 2001 and 9 June 2011).

In the context of the constitutional justice case at issue, it should be noted that the Constitution, *inter alia*, the right of a person to apply to a court, as consolidated in Paragraph 1 of Article 30 thereof, the imperative of a public and fair hearing of a case by an independent and impartial court, as guaranteed in Paragraph 2 of Article 31 thereof, and the constitutional principle of a state under the rule of law imply the duty of the state to ensure, under the procedure and conditions established in a law and taking account of the financial capacities of the state, the provision of effective legal aid, *inter alia*, legal advice and legal

representation services, to those socially sensitive (vulnerable) persons for whom, in the ordinary market of legal services, such legal aid would otherwise be fictitious or its access would be extremely difficult due to financial reasons, as well as in those cases where this is necessary for the interests of justice. While regulating the legal aid (public legal service) that is financed from state budget funds or other public funds and is ensured by special institutional and organisational means, the legislature has broad discretion to choose a model of organising, providing, and funding such legal aid, *inter alia*, to establish the subjects administrating this legal aid (service) and those directly rendering it, the forms of their activity, and the grounds for remunerating them.

It also needs to be noted that, having established in laws that the legal aid (public service) ensured by the state is provided, *inter alia*, by persons engaged in individual professional activity, *inter alia*, by advocates, the legislature has broad discretion to establish a system of payment for legal services rendered by these subjects; meanwhile, an institution authorised by the legislature, paying regard to the objectives of the functioning of this system as determined in laws, may responsibly concretise certain (explicitly or implicitly comprised) elements of this system, including, *inter alia*, additional funding where the rendering of the service in question becomes prolonged due to objective reasons.

In this context, it should also be noted that the Constitutional Court has held that the state may choose various systems of remuneration for work; it is allowed to establish a system with a fixed-size salary, or a system with both minimum and maximum salaries for particular positions, or a system where remuneration for work is regulated by applying a coefficient with a certain established value based on a certain established unit (such remuneration may also consist of several elements) (rulings of 20 May 2007 and 30 April 2013). This provision of the official constitutional doctrine is *mutatis mutandis* applicable to cases where the activity of advocates rendering public legal services is financed by the state budget funds or other public funds.

[...]

... under the Constitution, a person who has completed assigned work has the right to demand that he/she be paid the whole work remuneration (remuneration) that is due according to legal acts. This provision of the official constitutional doctrine is *mutatis mutandis* applicable to the legal regulation governing funding, from state budget funds or other public funds, the activity of advocates rendering public legal services according to the agreement and under the procedure established by means of a law.

Thus, the legislature, when regulating the funding of the activity of advocates rendering state-guaranteed legal aid, or an institution authorised by it, paying regard to the objectives of the functioning of this system determined in laws, may stipulate, *inter alia*, that the base of the remuneration for the advocates who are assigned by the state where necessary (on an irregular basis) and on voluntary grounds to provide public legal services for consideration is calculated according to the category of a concrete case or the stage of its consideration in courts; meanwhile, where the rendering of the service becomes prolonged due to objective reasons, additional remuneration may be paid and its maximum amount is responsibly and proportionately limited by a certain number of the calculated hours of the service.

Consequently, an advocate rendering public legal services under the procedure established by means of a law, once he/she has carried out the activity assigned (entrusted under the agreement) to him/her by the state where necessary, has the right to demand that he/she be paid all remuneration for the preparation for a certain case or procedural representation due according to legal acts, including all additional remuneration provided for by legal acts where the rendering of the service becomes prolonged due to objective reasons.

[...]

It should be emphasised that the constitutional duty of the state to ensure the provision of legal aid (public legal service) under the procedure and conditions established by means of a law also implies the obligation to responsibly plan, accumulate, and use the funds needed for such legal aid, as well as the obligation to regulate remuneration for the provision of this service, *inter alia*, on the grounds of the professional activity of advocates, so that financial resources would be used rationally and distributed in an even manner, so that such legal aid would be accessible to everyone to whom it is necessary, as well as

so that speedy legal proceedings and choosing the most effective means and measures of the defence of rights would be encouraged.

It should also be emphasised that advocates, in assuming the obligation to render legal aid funded from public funds, in the light of the essence of the activity of providing independent professional legal aid and the purpose of the law regulating state-guaranteed legal aid, should be treated as respectively bound by the obligation, stemming from the specific nature of their profession, not to dismiss the risk of additional costs and expenses and to evaluate such a risk where the rendering of the service becomes prolonged due to objective reasons, as well as to maintain high standards of their professional activity, *inter alia*, to choose such legitimate ways and measures of defence that would comply, as much as possible, with the requirements of proper, *inter alia*, speedy, economical, and fair legal proceedings. Thus, the providers of legal aid guaranteed by the state, who have agreed to render it under agreement concluded of their own free will, may not be considered to have gained the legitimate expectation that, where the rendering of the service becomes prolonged due to objective reasons, all work costs incurred in connection with the rendering of the public service will additionally be reimbursed from state budget funds.

[...]

... a law may establish a differentiated legal regulation with respect to certain categories of persons who are in different situations. Such a provision of the official constitutional doctrine is *mutatis mutandis* applicable to the legal regulation governing the funding from state budget funds the activity of advocates who may provide public legal services independently under the procedure established by means of a law and on the grounds of an agreement, as well as the activity of prosecutors and judges who perform their professional legal activity (hold office) in state institutions.

Thus, there are no grounds for stating that the requirement stems from Article 29 of the Constitution to establish a uniform system of remuneration from state budget funds or other public funds for the work of state officials or state servants and persons engaged in independent professional activities – for legal services rendered by advocates.

Consequently, there are also no grounds for stating that the requirement stems from Article 48 of the Constitution to establish the system of remuneration from state budget funds or other public funds for the work of advocates rendering state-guaranteed legal service where such a system, according to its elements ... would not be different from the system of remuneration (elements thereof) for the work of judges, prosecutors, or other state officials or servants working in the same legal system.

The duty of the state to ensure the provision of effective legal aid to persons to whom access to legal aid is particularly difficult due to financial reasons in those cases where the provision of effective legal aid is necessary in the interests of justice

See 2.1.5.2.2. The right to a fair trial, the ruling of 11 October 2018.

The right to an advocate; the duty of the state to ensure effective legal aid in criminal and civil proceedings (Paragraph 1 of Article 30 and Paragraphs 2 and 6 of Article 31 of the Constitution)

The Constitutional Court's ruling of 1 March 2019

The Constitutional Court noted that the right of a person to have an advocate is one of the conditions for the effective implementation of the right of a person to judicial protection (rulings of 9 June 2011 and 9 July 2015). The constitutional right to defence, as well as the right to have an advocate, give rise to the obligation of the legislature to particularise, by means of laws, the implementation of this constitutional right of persons and the duty of state institutions to ensure the real possibilities for the implementation of these rights (*inter alia*, the rulings of 12 February 2001, 9 July 2015, and 11 October 2018).

... under the Constitution, when the implementation of the constitutional right to apply to a court, *inter alia*, to file an appeal with the court of appeal instance against the final act of a court of first instance, is regulated, the right to an advocate, as one of the conditions for the effective implementation of the right of a person to judicial protection, may not be transformed into the duty restricting this constitutional right, *inter alia*, to the extent that the possibility of exercising the right itself would be denied.

[...]

... seeking to ensure the right of a person to judicial protection, which is consolidated in Paragraph 1 of Article 30 of the Constitution, and compliance with the constitutional principle of a state under the rule of law, as well as the right to the due process of law as implied by the said right and principle, the duty stems for the legislature, taking into account the financial capabilities of the state and having regard to the obligations stemming from the Constitution, *inter alia*, Paragraphs 2 and 6 of Article 31 thereof, to primarily ensure the provision of effective legal aid in criminal cases to those socially sensitive (vulnerable) persons for whom, in the ordinary market of legal services, it would otherwise be fictitious or its access would be extremely difficult due to financial reasons, as well as in other cases where it is necessary in the interests of justice. It should also be noted that, under the Constitution, *inter alia*, Paragraph 1 of Article 30 thereof, and the constitutional principle of a state under the rule of law, the legislature must also establish such a legal regulation under which, in the cases established in the law, the legal aid guaranteed by the state would be provided, *inter alia*, in civil proceedings, to those persons for whom it would be altogether impossible to implement their right to apply to a court if such aid were not provided.

Thus, under the Constitution, in view of the particularities of civil and criminal proceedings, the provision of legal aid, which is financed from state budget funds or other public funds and is ensured by special institutional and organisational means, *inter alia*, the possibility of receiving the assistance of a lawyer, may be regulated in a different manner in civil and criminal proceedings.

2.1.5.3. The constitutional principle of compensation for damage

Compensation for damage inflicted on persons as a result of unlawful actions performed by state institutions or officials (Paragraph 2 of Article 30 of the Constitution)

The Constitutional Court's ruling of 30 June 2000

One of the main ways of protecting violated rights and freedoms is compensation for damage inflicted as a result of unlawful actions.

Article 30 of the Constitution prescribes:

“A person whose constitutional rights or freedoms are violated shall have the right to apply to a court. Compensation for material and moral damage inflicted upon a person shall be established by law.”

The norm of Paragraph 2 of Article 30 of the Constitution provides for the duty of the legislature to pass a law or laws providing for compensation for damage for a person who has suffered material or moral damage. Laws must provide for the real protection of violated human rights and freedoms; this protection must be coordinated with the protection of other values consolidated in the Constitution.

Thus, the Constitution guarantees the right of an individual to compensation for material or moral damage, including the recovery of damage through judicial procedure.

While deciding the question of the legal responsibility of the state for damage inflicted as a result of actions performed by its institutions or officials, emphasis should be placed on the provisions of Article 5 of the Constitution, according to which the scope of power is limited by the Constitution and state institutions serve the people. On the grounds of these constitutional provisions, the constitutional principle of the protection of human rights and freedoms, as well as other principles found in a state under the rule of law, the conclusion should be drawn that, in the course of implementing Paragraph 2 of Article 30 of the Constitution, a law must provide for the duty of the state to compensate for material and moral damage inflicted as a result of unlawful actions performed by its institutions and officials. Only such interpretation of Paragraph 2 of Article 30 of the Constitution makes it possible to ensure the effective protection of violated constitutional rights and freedoms of individuals.

The nature of functions fulfilled by the state and the diversity of activities carried out by its institutions determine the particularities of the legal responsibility of the state; therefore, compensation for damage in various areas where the state fulfils its functions may be regulated in a different manner.

As mentioned before, the norm of Paragraph 2 of Article 30 of the Constitution obligates the legislature to pass laws that provide for compensation for damage. The Constitutional Court emphasises

that the Constitution is a directly applicable act; therefore, even in the absence of the respective regulation established by means of a law, an individual, by making direct reference to Paragraph 2 of Article 30 of the Constitution and other articles thereof, in which guarantees are established for the protection of the respective human rights and freedoms, may claim compensation for damage inflicted on him/her as a result of unlawful actions performed by state institutions or its officials.

Compensation for damage inflicted on persons (Paragraph 2 of Article 30 of the Constitution)

The Constitutional Court's ruling of 19 August 2006

In protecting and defending human rights and freedoms (and, in general, individual rights and freedoms – not only those of natural persons, but also those of legal persons), *inter alia*, human dignity, a particular importance falls on the institution of compensation for damage. Paragraph 2 of Article 30 of the Constitution provides that compensation for material and moral damage inflicted on a person is established by law. Thus, the necessity to compensate for material and moral damage inflicted on a person is a constitutional principle (rulings of 20 January 1997 and 13 December 2004). This constitutional principle is inseparable from the principle of justice, which is consolidated in the Constitution: laws must create all necessary preconditions for fair compensation for inflicted damage. Thus, the Constitution imperatively requires that a law establish such a legal regulation according to which a person who has suffered damage as a result of unlawful actions could in all cases demand and receive fair compensation for that damage. ... it does not follow from the Constitution that it is possible to establish, by means of laws, some exceptions under which moral and/or material damage inflicted on a person is not compensated, for example, because of the reason that it was inflicted as a result of unlawful actions performed by the institutions or officials of the state itself. If a law, and the more so another legal act, established such a legal regulation by which the state would fully or partially avoid the duty to justly compensate for material and/or moral damage inflicted as a result of unlawful actions performed by state institution or officials, it would mean not only that the constitutional concept of compensation for damage is disregarded and that such a legal regulation is not in line with the Constitution (*inter alia*, Paragraph 2 of Article 30 thereof), but also that the *raison d'être* of the state itself as the common good of all society would be undermined.

It should be noted that the legislature, while regulating, by means of a law, the relationships linked with compensation for material and/or moral damage inflicted on a person, has a certain degree of discretion inasmuch as this is not restricted by the Constitution. Thus, a legal regulation established in laws may be differentiated according to whether damage inflicted as a result of unlawful actions is compensated under extrajudicial or judicial procedure; however, in any case, it is not allowed to establish any such a legal regulation that would deny the right of a person to apply to a court and to claim just compensation for damage inflicted as a result of unlawful actions. In the regulation of the said relationships by means of a law, it is also necessary to pay regard to the constitutional principles of the equality of the rights of persons, the inviolability and protection of property, the independence of courts, the due process of law, and other constitutional principles.

... the Constitution does not tolerate any such a legal regulation where a person who has sustained material and/or moral damage as a result of unlawful actions performed by state institutions and officials cannot in a court claim just compensation for such damage, or where a court, which must administer justice under the Constitution (*inter alia*, Article 109 thereof), cannot, while taking account of all significant circumstances of a case, establish the amount of material and/or moral damage inflicted on a person as a result of the said unlawful actions and cannot, while following law, *inter alia*, not violating the imperatives of justice, reasonableness, and proportionality, award just compensation for that material and/or moral damage sustained by the said person.

It should also be emphasised that the institution of compensation for damage inflicted as a result of unlawful actions performed by state institutions and officials implies, *inter alia*, that the right of a person to compensation for damage inflicted as a result of unlawful actions performed by state institutions and officials arises only once it is held, in accordance with the procedure established by means of laws (in compliance with the requirements of the due process of law), that particular state institutions and officials

performed unlawful actions and that the said person sustained damage specifically due to the said unlawful actions performed by those state institutions and officials.

The legislature may exercise discretion while regulating the relationships linked with compensation for material and/or moral damage inflicted on a person as a result of unlawful actions performed by state institutions and officials; however, such discretion may not be interpreted as including the free discretion to establish a certain exhaustive (finite) list of cases in which such damage must be compensated for or to stipulate that in certain cases damage inflicted as a result of the said unlawful actions may be not subject to compensation.

Under the Constitution, the legislature also does not have the freedom to establish any minimum limits and prescribe that, where damage inflicted on a person by state institutions or officials is below the said limits, such damage would not be subject to compensation. Neither does the legislature have the constitutional powers to establish any maximum compensation limits of damage inflicted on a person by state institutions or officials where such limits would restrict a court and would prevent it from awarding just compensation for that material and/or moral damage sustained by a person.

It also needs to be mentioned that, in the regulation of the relationships of compensation for damage inflicted as a result of unlawful actions performed by state institutions and officials, it is not allowed to establish any such a legal regulation that would make compensation for damage dependent on whether a court decision by which a person is unlawfully sentenced (and which is quashed later) is appealed under appeal procedure or cassation procedure (ruling of 30 June 2000).

If all the said imperatives were disregarded, the preconditions would be created for the occurrence of such legal situations where damage inflicted on a person as a result of unlawful actions performed by state institutions and officials would be compensated partially or not compensated at all and the constitutional powers of courts to administer justice would be limited. This would also mean that the constitutional concept of compensation for damage is disregarded and that the constitutional principles of justice and a state under the rule of law are deviated from.

In this context, it should be noted that, under the Constitution, a person has the right to claim compensation for damage inflicted as a result of unlawful actions performed by state institutions and officials also where the particular case of compensation for damage is not specified in any law; meanwhile, courts, deciding such cases within their competence, have the constitutional powers to award the respective compensation for damage by directly applying the Constitution (principles of justice, legal certainty and legal security, proportionality, the due process of law, the equality of the rights of persons and the protection of legitimate expectations, as well as other provisions of the Constitution) and the general principles of law, by following, *inter alia*, the principle of reasonableness, etc.

[...]

... the Constitution does not prohibit the legislature from establishing in a law, by paying regard to the norms and principles of the Constitution, reasonable and well-founded criteria when regulating the relationships linked with compensation for damage inflicted as a result of unlawful actions performed by state institutions and officials where the said criteria would make it possible to establish (assess) the amount of the damage that should be compensated. Such criteria may be very different; they may be differentiated according to the nature, particularities, and other circumstances of the inflicted damage. The Constitutional Court held in its ruling of 30 June 2000 that compensation for damage in various areas where the state fulfils its functions may be regulated in a different manner. Thus, it is also allowed to establish such a separate special legal regulation that would include legal situations where damage is inflicted on a person not by any type of subjects, but only as a result of unlawful actions performed by state institutions and officials, or even a more special legal regulation that would include legal situations where damage is inflicted on a person not as a result of any type, but as a result of specific, unlawful actions performed by state institutions and officials; such differentiation of a legal regulation may also include the aforesaid criteria under which it would be possible to establish (assess) the amount of damage subject to compensation. However, as it was held in this ruling of the Constitutional Court, the overall legal regulation of the relationships linked with compensation for material and/or moral damage inflicted on a person as a

result of unlawful actions performed by state institutions and officials may not be such where its differentiation would create the preconditions for interpreting the said legal regulation as implying the possibility of establishing an exhaustive (finite) list of cases where damage inflicted on a person must be subject to compensation.

It should also be emphasised that no criteria, *expressis verbis* specified in laws, on the basis of which it is possible to establish (assess) the amount of damage subject to compensation may impede a court from administering justice, i.e. by taking account of all significant circumstances of a case, from establishing the amount of material and/or moral damage inflicted on a person as a result of unlawful actions performed by state institutions and officials and, by following law, *inter alia*, by respecting the imperatives of justice, reasonableness, and proportionality, from awarding just compensation for material and/or moral damage sustained by a person.

Compensation for damage inflicted on persons: types of damage (material and moral damage); the possibility of claiming compensation for damage sustained by another person (Paragraph 2 of Article 30 of the Constitution)

The Constitutional Court's ruling of 19 August 2006

Paragraph 2 of Article 30 of the Constitution mentions *expressis verbis* two types of damage: material and moral damage, i.e. (correspondingly) property losses and moral (non-property) injuries (they may also be caused by physical pain), which may be assessed and compensated materially only on certain conditions. The legislature must pay regard to this constitutional distinction.

... the types of damage mentioned in Paragraph 2 of Article 30 of the Constitution may also be named in laws by different terms only if those terms do not deny (distort) the constitutional concept of the said types of damage.

The classification of damage (subject to compensation) inflicted on a person into material damage and moral damage, as consolidated in Paragraph 2 of Article 30 of the Constitution, determines the particularities of a legal regulation governing the relationships linked with compensation for damage of a particular type. One of such particularities is related to the establishment (assessment) of the amount of inflicted damage and to the form of compensation for that damage. While compensating for material damage, in all cases it is possible to follow the principle of full (adequate) compensation for damage (*restitutio in integrum*) when the amount of inflicted damage may be expressed in a monetary equivalent and damage may be compensated with money (also, this does not deny the possibility of compensating for material damage by means of other property or otherwise); thus, material losses are compensated with material assets. Meanwhile, as mentioned before, moral damage is a moral injury that can only be assessed and compensated materially on certain conditions; it is quite often completely impossible (*inter alia*, even by means of material compensation) to replace a moral injury suffered by a person, because it is impossible to return back the psychological, emotional, or another condition of a person that had been before this person suffered the aforesaid moral injury – such a condition sometimes (at best) can be newly created while using, *inter alia*, material (first of all, monetary) compensation for that moral damage (however, this does not mean that, sometimes, moral satisfaction alone for sustained moral damage is not indeed impossible). Material (monetary) compensation for moral damage, as the material equivalent of the said moral damage, must also be paid by following the principle of full (adequate) compensation for damage. In such cases, the application of such compensation has typical important characteristics, since the content of this material compensation virtually differs from the content of moral damage itself (which was inflicted and which is compensated); thus, according to its nature, such material compensation (regardless of its amount) cannot (or not always can) replace a moral injury suffered by a person. The purpose of such material (first of all, monetary) compensation for moral damage is to create the material preconditions for newly creating what is impossible to return, and to compensate a person as justly as possible for what often may not be replaced by anything at all – neither by money nor by any material property.

As such, the classification of damage (subject to compensation) inflicted on a person into material damage and moral damage is not identical to the classification of damage into damage for which material

compensation may be claimed not only by persons who have sustained particular damage, but also by certain other persons, and into damage for which material compensation may be claimed only by a person who has sustained particular damage, as the possibility of material compensation for the said damage is related only to that person and may not be related to any other person. For instance, while paying regard to the constitutional imperative of the protection and defence of ownership (and related property rights) and other constitutional requirements, it needs to be held that the right to claim compensation for certain material damage must usually be inherited or transferred in any other way; however, such legal situations are also possible where the right to claim compensation for certain material damage is inseparably related only to the person who has sustained that damage and it may not be related to any other person. Also, the right to claim for material compensation for the moral damage inflicted on a person in some cases may be related only to the person who has sustained that damage; however, under the Constitution, legal situations are also possible where this right may be transferred to certain other persons.

It should be noted that it does not follow from the Constitution that compensation for material and/or moral damage inflicted on a person must in all cases be paid (or compensated otherwise) specifically to the person who has sustained such damage and that the respective compensation may not altogether be paid to another person (persons). In particular, legal situations should be mentioned where a person who sustained damage dies, the more so such legal situations where the fact that he/she was deprived of his/her life constitutes the content of the inflicted damage. ... the Constitution requires that a law establish such a legal regulation that would ensure that the state could not avoid the duty to pay compensation, provided that such compensation is reasonably claimed, for damage inflicted as a result of unlawful actions performed by its institutions and officials also in cases where it is not possible to pay compensation for that damage to the same person in whose respect those unlawful actions were performed precisely because of the fact that the person is dead, all the more so that the content of damage inflicted on the said person includes the fact that he/she was deprived of his/her life as a result of the aforementioned unlawful actions. Thus, the state may not avoid compensating for such damage in all cases where it is reasonably claimed by other persons and a person in whose respect the unlawful actions of state institutions and officials were performed and who sustained particular material and/or moral damage as a result of the said actions cannot claim himself/herself compensation for it because of the fact that the unlawfulness of the actions performed by state institutions and officials is established already after the death of the said person (sometimes the cause of which may be the said unlawful actions) or because of the fact that, even though the unlawfulness of the actions performed by state institutions and officials was established when the person was alive, he/she died earlier than he/she could (during a reasonable term established in a law) exercise his/her right to claim compensation for damage or he/she had exercised this right, but died before the decision of the respective state institution (*inter alia*, a court) was adopted and/or executed regarding the claim.

If such a legal regulation were established according to which it would be possible to pay the said compensation for damage inflicted as a result of unlawful actions performed by state institutions and officials only to a person who sustained that damage, and it would be impossible in any circumstances to pay compensation for that damage to other persons, even though the claims of other persons to compensate for the said damage inflicted not directly on them would be most reasoned on the basis of the imperatives of justice, reasonableness, and proportionality, arising from the Constitution, and on the basis of other provisions of the Constitution, it would mean that, in certain cases, the state, using a formal clause that it has itself created, tries to avoid its obligation and neglect its constitutional duty to compensate for damage inflicted as a result of unlawful actions performed by its institutions and officials; it would have to be stated that the state tries not to fulfil the said constitutional obligation even where a person dies specifically as a result of unlawful actions performed by state institutions and officials and that such unlawful actions caused the death of the person who, should he/she had survived, would have received compensation for the said damage. Such a position of the state, if it were consolidated in legal acts, would be incompatible not only with various provisions of the Constitution (*inter alia*, with those that consolidate family as the basis of society and the state and with those that protect and defend family, motherhood, fatherhood, childhood,

and other constitutionally valuable social relationships), but also with the essence of the State of Lithuania itself, as a democratic state based on law and justice, as well as with its constitutional mission and nature.

The mere fact that a person in whose respect certain state institutions and officials directly performed certain unlawful actions, thereby inflicting damage on him/her, has exercised the right to claim (and receive) compensation for such damage does not mean that other persons are in general (in all cases) prevented from claiming (by applying to a court) compensation for (material or moral) damage sustained by them as a result of the same unlawful actions, even though those actions were not performed directly in their respect (e.g. the dependants of a person in whose respect unlawful actions were directly performed may have the independent right to claim (by applying to a court) compensation for damage inflicted on them, regardless of whether the said person has exercised his/her right of claim or not). Otherwise, the principles of justice and a state under the rule of law, which are established in the Constitution, would be diverged from, *inter alia*, the powers of a court to administer justice, which are consolidated in Article 109 of the Constitution, would be limited and the constitutional concept of compensation for damage, which is laid down, *inter alia*, in Paragraph 2 of Article 30 of the Constitution, would be disregarded.

[...]

... the absolute prohibition on inheriting the right of natural persons to compensation for damage that was inflicted as a result of certain unlawful actions performed by an interrogator, an investigator, a prosecutor, or a court limits, *inter alia*, the powers of a court to administer justice, which are consolidated in Article 109 of the Constitution, deviates from the constitutional concept of compensation for damage, which is laid down, *inter alia*, in Paragraph 2 of Article 30 of the Constitution, and violates the constitutional principles of justice and a state under the rule of law.

Compensation for damage inflicted on persons where such compensation is paid, *inter alia*, on the basis of a compulsory contractual insurance against liability (Paragraph 2 of Article 30 of the Constitution)

The Constitutional Court's ruling of 3 February 2010

The provision of Paragraph 2 of Article 30 of the Constitution, which consolidates the right of a person to receive compensation for material and moral damage inflicted on him/her, obligates the legislature to establish sufficient measures of the implementation of this right.

When performing the duty to adopt a law or laws that establish compensation for damage inflicted on a person, the legislature, by using its discretion, may choose and consolidate, in a law or laws, various forms of compensation for inflicted damage. ... the constitutional principle of justice also implies that damage must normally be compensated by the person who caused damage or by another person responsible for the actions of the person who caused that damage.

... the legislature, having taken into account, *inter alia*, the fact that the risk of inflicting damage (emergence of damage) is higher in certain spheres of activity and striving to ensure that damage inflicted on persons would be compensated efficiently and timely, may also establish such a legal regulation whereby, on the basis of a contract, the obligation of compensating for damage inflicted on other persons is undertaken by a person other than the one who inflicted damage or by a person who is responsible for the actions of the person who inflicted damage, i.e. to establish the so-called insurance-based method of compensation for damage. In establishing such a method of compensation for damage inflicted on a person, the legislature must consolidate the grounds for insurance-based compensation for damage.

... it should also be noted that the legislature, having taken into account the fact that the use of certain objects poses a higher risk to the rights and legitimate interests of other persons, as well as having taken into account the particularities of certain vocational or economic activities of other persons, may establish such a legal regulation according to which persons who use certain objects or who are engaged in certain vocational or economic activities must obtain insurance to cover their civil liability against causing damage. When establishing the grounds and conditions for compulsory insurance, the legislature may set, *inter alia*, the maximum amounts covered by insurance. In establishing such conditions, the legislature must ensure

that the fulfilment of the duty to pay insurance contributions would not become an excessively heavy burden for a person who must, pursuant to the law, obtain insurance to cover his/her civil liability against causing damage.

... the activity of economic operators that undertake, in accordance with the procedure laid down in a law and on the basis of a contract, the obligation of compensating, to a certain extent, for damage caused by another person should be regarded as a type of certain economic-commercial activity. Thus, the legislature, when regulating the relationships of insurance-based compensation for damage, *inter alia*, when setting the grounds for the legal situation of operators that undertake, under a contract, the obligation of compensating, to the certain extent, damage caused by another person, must pay regard to the imperatives that stem, *inter alia*, from Article 46 of the Constitution.

[...]

It needs to be noted that a legal regulation governing the relationships of damage compensation may be differentiated, by means of laws, in view of whether a person is compensated for damage under judicial or extrajudicial procedure; however, under no circumstances is it allowed to establish such a legal regulation that would deny the right of a person to apply to a court and to demand just compensation for the inflicted damage from the operator that undertook, under a contract, the obligation of compensating for damage to a certain extent, or from the person who inflicted damage, or from another person who is responsible for the actions of the person who inflicted damage. When regulating the said relationships by means of a law, the constitutional principles of the equality of the rights of persons, justice, and other constitutional principles must be followed.

Under the Constitution, compensation for damage inflicted on a person must be real and fair.

The legislature may not establish any such a legal regulation that would create the preconditions for a situation where a person who has suffered damage, *inter alia*, moral damage, would not be able to receive fair compensation for damage.

The constitutional principle of compensation for damage is inseparable from the principle of justice, which is consolidated in the Constitution: laws must create all necessary preconditions for fair compensation for inflicted damage (ruling of 19 August 2006). Thus, the Constitution imperatively requires that a law must establish such a legal regulation according to which a person who has suffered damage could in all cases demand and receive fair compensation for that damage.

The constitutional imperative that damage must be compensated in a fair manner is also related to the constitutional principles of the proportionality and adequacy of compensation for damage, which require that the measures that are established in laws and are applicable be proportionate to the objective sought and not limit the rights of persons more than necessary in order to achieve the legitimate, universally significant, and constitutionally justifiable objective, and not create the preconditions for abusing law (ruling of 27 March 2009).

... the legislature, when laying down, *inter alia*, a legal regulation governing compensation for damage inflicted on a person in cases where certain subjects, on the basis of a compulsory insurance contract, undertake the obligation of compensating for damage inflicted by another person, is not obligated to establish such insurance-covered amounts that, upon the occurrence of the insured event, would in all cases ensure full compensation for damage. However, the legislature must not deny the constitutional right of a person to claim, on general grounds, full compensation for the damage inflicted on him/her, *inter alia*, when the insurance amount does not cover full compensation for damage, i.e. to claim compensation for damage from the person who inflicted damage or from another person who is responsible for the actions of the person who inflicted damage.

[...]

According to Paragraph 2 of the Constitutional Act on Membership of the Republic of Lithuania in the European Union, the norms of European Union law are a constituent part of the legal system of the Republic of Lithuania and, where it concerns the founding Treaties of the European Union, the norms of European Union law are applied directly, while in the event of the collision of legal norms, they have supremacy over the laws and other legal acts of the Republic of Lithuania.

... the relationships of compulsory insurance against civil liability of holders of vehicles are also regulated by the respective legal acts of the European Union. ... in the course of the regulation of the relationships of compulsory insurance against civil liability of holders of vehicles, the legislature must also pay regard to the requirements that originate from the legal acts of the European Union. The laws of the Republic of Lithuania that regulate the aforementioned relationships may not compete with the legal acts of the European Union.

The right of persons who sustained damage due to genocide to demand compensation for such damage from natural persons who committed this crime

The Constitutional Court's ruling of 29 November 2010

The constitutional right of a person to demand real and fair compensation for material and moral damage does not mean that a law may not define various conditions and grounds for the emergence of damage; taking account of this, the proper time limits for demanding such compensation are established.

In this context, it needs to be noted that damage may emerge on various grounds and under various circumstances, *inter alia*, also due to committing a crime, as well as due to such crimes as genocide, responsibility for which is not subject to statutory limitations under international documents.

[...]

Under Paragraph 2 of Article 30 of the Constitution and under the constitutional principle of justice, there may not be any such a legal regulation that would create the preconditions for such situations where damage sustained by persons, *inter alia*, damage due to genocide, could not be compensated in a fair manner.

... such a legal regulation whereby persons who sustained damaged due to genocide would not be allowed to receive fair compensation for damage due to the fact that they do not have the right to demand compensation for such damage from the natural persons who committed the crime of genocide and with regard to whom an effective court judgment has been adopted would be in conflict with the Constitution, *inter alia*, with Paragraph 2 of Article 30 thereof, and with the constitutional principle of justice.

Thus, the Constitution, *inter alia*, Paragraph 2 of Article 30 thereof, and the constitutional principle of justice give rise to the duty of the legislature to regulate the relationships of compensation for damage that occurred due to the perpetration of genocide (where such damage has not been compensated yet) so that persons who sustained damage due to genocide would have the right to demand, without being restricted by any time limits, fair compensation for damage from the natural persons who committed the crimes of genocide.

The duty to compensate for damage caused by a criminal act (Paragraph 2 of Article 30 of the Constitution)

The Constitutional Court's ruling of 19 May 2017

Paragraph 2 of Article 30 of the Constitution provides that compensation for material and moral damage inflicted on a person is established by law.

As held by the Constitutional Court, in protecting and defending human rights and freedoms, *inter alia*, human dignity, a particular importance falls on the institution of compensation for damage (ruling of 19 August 2006); compensation for damage inflicted as a result of unlawful actions is one of the main ways of protecting violated rights and freedoms (ruling of 30 June 2000).

In its acts (*inter alia*, the rulings of 19 August 2006, 3 February 2010, and 16 April 2015), the Constitutional Court formulated the broad constitutional doctrine of compensation for damage, which is based on the essential provision that the necessity to compensate for material and moral damage inflicted on a person is a constitutional principle, whose consolidation is aimed to ensure that persons who have suffered material or moral damage will be compensated.

[...]

... in order to attain a balance between the interests of an insolvent natural person and his/her creditors by means of the institution of the bankruptcy of a natural person, which is established in the law, the

legislature may not deny the requirement, which arises from the Constitution (*inter alia*, from the principle of compensation for damage, laid down in Paragraph 2 of Article 30 thereof, as well as from the constitutional principles of justice and a state under the rule of law), that a person who has sustained material and moral damage must be compensated for in a fair manner. Consequently, when determining the conditions for releasing bankrupt natural persons from debt obligations, the legislature may not establish any such a legal regulation according to which persons would be able to avoid the obligation to compensate for the material and/or moral damage caused by them by committing a criminal act and a person who has sustained the said damage would not be able to receive fair compensation for it.

... in view of the fact that ... the personal bankruptcy process is aimed to attain a fair balance between the interests of the debtor and his/her creditors, it would be unfair to establish such a legal regulation under which the interests, *inter alia*, the desire to return to an active economic activity, of a person who has caused damage by committing a criminal act would have greater protection than the rights of a person who has sustained the said damage, i.e. his/her right to receive fair compensation for the sustained damage, which, at least in part, would restore the situation that had existed before the criminal act was committed. Thus, not only the insolvency of a person who has committed an intentional criminal act, but also the insolvency of a person who has committed a negligent criminal act, is not a constitutionally justifiable ground for releasing such a person from the obligation to compensate for the damage that he/she has caused.

Compensation for damage inflicted on persons as a result of the unlawful actions performed by state institutions or officials (*inter alia*, ministers) (Paragraph 2 of Article 30 of the Constitution)

The Constitutional Court's ruling of 8 March 2018

Paragraph 2 of Article 30 of the Constitution prescribes: "Compensation for material and moral damage inflicted upon a person shall be established by law."

As held by the Constitutional Court, the right of a person to claim compensation for damage inflicted by unlawful actions arises from Paragraph 2 of Article 30 of the Constitution (ruling of 19 May 2017); compensation for damage inflicted as a result of unlawful actions is one of the main ways of protecting violated rights and freedoms (ruling of 30 June 2000).

... mention should be made of some provisions of the official constitutional doctrine of compensation for damage, which have been formulated in the acts passed by the Constitutional Court, regarding the legal responsibility of the state for damage caused as a result of the actions carried out by its institutions or officials:

– on the basis of the constitutional provisions of Article 5 of the Constitution that the scope of power is limited by the Constitution and that state institutions serve the people, also on the basis of the constitutional principle of the protection of human rights and freedoms, as well as other principles of a state under the rule of law, the conclusion should be drawn that, in order to implement Paragraph 2 of Article 30 of the Constitution, a law must provide for the duty of the state to compensate for material and moral damage inflicted as a result of unlawful actions committed by its institutions and officials; only such interpretation of Paragraph 2 of Article 30 of the Constitution makes it possible to ensure the effective protection of the violated constitutional rights and freedoms of individuals (ruling of 30 June 2000); if a law, let alone another legal act, established such a legal regulation by which the state could fully or partially avoid the duty to justly compensate for material and/or moral damage inflicted as a result of unlawful actions committed by state institutions or officials, it would mean not only that the constitutional concept of compensation for damage is disregarded and that such a legal regulation is not in line with the Constitution (*inter alia*, with Paragraph 2 of Article 30 thereof), but also that the *raison d'être* of the state itself as the common good of all society would be undermined (ruling of 19 August 2006);

– the Constitution does not prohibit the legislature from establishing in a law, while paying regard to the norms and principles of the Constitution, the reasonable and well-founded criteria when regulating the relationships linked to compensation for damage inflicted as a result of unlawful actions committed by state institutions and officials where the said criteria would make it possible to establish (assess) the amount of damage that should be compensated; such criteria may be very different; they may be differentiated

according to the nature, particularities, and other circumstances of the inflicted damage; on the other hand, no criteria, *expressis verbis* specified in the laws, by means of which it would be possible to establish (assess) the amount of damage that needs to be compensated, should impede a court from administering justice, i.e. by taking account of all the significant circumstances of the case, from establishing the amount of material and/or moral damage inflicted on a person as a result of unlawful actions committed by state institutions or officials and, by following the law, *inter alia*, without prejudice to the imperatives of justice, reasonableness, and proportionality, from awarding fair compensation for the material and/or moral damage sustained by the person (rulings of 19 August 2006 and 16 April 2015).

Thus, under the Constitution (*inter alia*, Paragraph 3 of Article 5 and Paragraph 2 of Article 30 thereof) and the constitutional principle of a state under the rule of law, the material and/or moral damage sustained by a person as a result of unlawful actions committed by state institutions or officials must be compensated for while taking into account the reasonable and well-founded criteria, as established by means of a law, in order to determine the amount of damage. ... this duty of the state should be interpreted as including its obligation to compensate a person for the material and/or moral damage suffered by him/her as a result of the unlawful actions committed by a minister in the exercise of his/her powers of internal administration with respect to the ministry and the establishments assigned to the area entrusted to the ministry.

... as held by the Constitutional Court, the constitutional principle of justice implies, *inter alia*, that damage must normally be compensated by the person who has caused it or by another person responsible for the actions of the said person (rulings of 3 February 2010 and 6 December 2013).

... the principle of responsible governance, as consolidated in the Constitution, implies that all state institutions and officials are obliged to follow the Constitution and law while performing their functions and must properly implement the powers granted to them under the Constitution and laws by acting in the interests of the Nation and the State of Lithuania; the principle of transparency, as one of the principles governing the activity of public authority institutions and officials, which arises from the Constitution, implies, among other things, the responsibility of decision-making officials for their decisions; transparency is a necessary precondition, *inter alia*, for preventing the abuse of power; therefore, it is a necessary precondition for people to have trust in public authority institutions and the state in general.

It also needs to be mentioned that the state performs its functions through the system of respective institutions; this system includes, first of all, state institutions (ruling of 13 December 2004); if state institutions or officials act *ultra vires*, such acts may not, unreservedly, be equated with the acts of the state itself (ruling of 30 October 2008).

... the personal responsibility of a minister as implied by the provision “Ministers shall head their respective ministry” of Paragraph 1 of Article 98 of the Constitution means his/her personal responsibility for all his/her activities, *inter alia*, for the proper exercise of the powers of internal administration with respect to the ministry and the establishments assigned to the area entrusted to the ministry; in view of the overall legal regulation consolidated in the Constitution, there are no grounds for stating that, under the Constitution, ministers are subject to other rules of legal responsibility compared with other persons (except for immunity provided for in Article 100 of the Constitution in cases where criminal responsibility or the restriction of liberty is applied to ministers).

Thus, under the Constitution, *inter alia*, the constitutional principles of responsible governance and a state under the rule of law, if state officials, *inter alia*, ministers, when improperly exercising the powers conferred on them under the Constitution and laws, inflict material and/or moral damage on persons by their unlawful actions (or inaction), such their actions cannot be equated with the actions (or inaction) of the state itself (or institutions thereof); state officials, *inter alia*, ministers who have inflicted damage must be held responsible in the prescribed manner for their actions that have caused damage.

In this context, it should also be noted that, under Paragraph 2 of Article 128 of the Constitution, the procedure for the possession, use, and disposal of state property is established by law.

Under the Constitution, property that belongs to the state by right of ownership should be managed in such a way that it would serve the general welfare of the nation and the interest of all society; the

Constitution gives rise to the requirement that state-owned property must be used sparingly, not wasted, and managed rationally (rulings of 30 September 2003 and 24 October 2012); while acting in the interests of society, state institutions must serve the common good of the nation (ruling of 30 September 2003).

Thus, under the Constitution, *inter alia*, Paragraph 3 of Article 5, Paragraph 2 of Article 30, and Paragraph 2 of Article 128 thereof, as well as under the constitutional principles of responsible governance and a state under the rule of law, in order to ensure proper respect for the interests of all society, it is necessary to create the preconditions for the state, after it has fulfilled (through its institutions) its constitutional duty to compensate a person for material and/or moral damage inflicted by the unlawful actions (or inaction) of state institutions and officials, *inter alia*, ministers, for obtaining (in whole or in part) reimbursement for the losses suffered due to this by the state from the state officials, *inter alia*, ministers, who have improperly exercised the powers conferred on them under the Constitution and laws. This is the only way to ensure that property owned by the state will serve the general welfare of the nation. Meanwhile, without creating such preconditions, it would not be ensured, *inter alia*, that state officials, *inter alia*, ministers, who have caused damage would be held responsible for their actions according to the established procedure and, therefore, that people would have trust in public authority institutions and the state in general; this would be incompatible with the Constitution, *inter alia*, the constitutional principles of responsible governance and a state under the rule of law.

As mentioned before, under the Constitution, the material and/or moral damage suffered by a person as a result of unlawful actions committed by state institutions or officials must be compensated by taking into account the reasonable and well-founded criteria, as established by means of a law, in order to determine the amount of that damage. ... the above-mentioned provisions of the official constitutional doctrine are also *mutatis mutandis* applicable to regulating, by means of a law, the duty of the state to compensate for damage caused as a result of unlawful actions committed by a minister in the exercise of the powers of internal administration with respect to the ministry and the establishments assigned to the area entrusted to the ministry, as well as to regulating, by means of a law, the procedure for implementing the right of the state, after it has fulfilled the said duty, to recourse against the person – a minister – who has caused the damage.

2.2. CIVIL (INDIVIDUAL) RIGHTS AND FREEDOMS

2.2.1. The right to life

Human life and dignity are exceptional values

The Constitutional Court's ruling of 9 December 1998

Human life and dignity constitute the integrity of a personality and they denote the essence of an individual. Life and dignity are the inalienable properties of an individual; therefore, they may not be treated separately. Innate human rights are the innate possibilities of an individual that ensure his/her human dignity in the spheres of social life. ...

Thus, human life and dignity, as expressing the integrity and singular essence of a human being, are above a law. In view of this, human life and dignity should be deemed to be exceptional values. In such a case, the purpose of the Constitution is to ensure the defence of and respect for these values. First of all, the state itself is subject to these requirements.

The particularities of formulating the human rights and freedoms that are consolidated in Chapter II of the Constitution (Article 19 of the Constitution does not contain any exceptions that would allow depriving individuals of their life on behalf of the state)

The Constitutional Court's ruling of 9 December 1998

The Constitutional Court, treating the human rights and freedoms that are consolidated in Chapter II of the Constitution as an integral catalogue, draws attention to the particularities of the wording of these rights and freedoms. As a rule, the fundamental rights listed in this chapter of the Constitution are presented

as a general norm. However, where there are exceptions to this norm, they are pointed to. For instance, Article 20 of the Constitution prescribes: “Human liberty shall be inviolable.” Paragraph 2 of the same article establishes the prohibition on the arbitrary apprehension or detention of an individual; an individual may not be deprived of his/her liberty otherwise than on the grounds and according to the procedures established by means of a law. Article 23 of the Constitution prescribes: “Property shall be inviolable”, while Paragraph 3 thereof stipulates that property may be taken only for the needs of society according to the procedure established by law and must be justly compensated for. Article 21 of the Constitution, having stated that “Human dignity shall be protected by law”, specifies in Paragraph 2 that it is prohibited to degrade the dignity of a human being, to subject him/her to cruel treatment, or to establish such punishments. The constitutional articles on the inviolability of private life (Article 22), the inviolability of the home of a human being (Article 24), etc. are formulated in a similar manner. Meanwhile, Article 19 of the Constitution contains only one general norm: “The right to life of a human being shall be protected by law.” Thus, it should be presumed that the norm of Article 19 provides for no exception that would allow depriving individuals of their life on behalf of the state.

Therefore, it is possible to assert that the exceptional protection of innate rights as provided for in Article 18 of the Constitution prevents the establishment of the death penalty ...

The protection of the right to life and the death penalty (Article 19 of the Constitution)

The Constitutional Court’s ruling of 9 December 1998

Article 19 of the Constitution prescribes: “The right to life of a human being shall be protected by law.” ... human life is deemed to be the highest value in the law of democratic countries. ... Attention should be paid to the fact that the Constitution demands that the right to life, but not life itself, be protected by law.

The right to life of a human being is ensured by a rather broad system of legal means, which is established in the Constitution itself and in numerous other laws. The legal regulation together with moral, religious, and other social norms is, first of all, aimed at the protection of the right to life of a human being.

The norms of the criminal law that establish responsibility for committing an unlawful act by which an attempt on the life of a human being is made constitute a separate group. ...

The Constitutional Court has noted that the protection of common interests in a democratic state under the rule of law may not deny a concrete human right in general. The doctrine of human rights and freedoms, as well as international and domestic law, which are based on the said doctrine, relate such a solution of the aforementioned problem to a rational proportion ensuring that limitations will not violate the essence of a particular human right. ... the right to life is an innate right of every individual. It is indivisible. Either there is life or there is no life. A court sentence may or may not deprive an accused person of his/her life. In the latter case, another punishment is imposed. After the imposition and execution of the death penalty, the life of a human being ceases. At the same time, the innate right to life of that human being, which is protected under the norm of the Constitution, is denied.

... a sanction providing for an alternative between the death penalty and the deprivation of liberty ... also raises an additional constitutional problem, deriving from the ... indivisible nature of the death penalty. ... a court, conforming to the grounds for imposing punishments that are established in criminal laws, chooses an optimal punishment according to the sanction and imposes it on the prisoner at the bar. An essential difference arises when the death penalty is imposed. In such a case, a court has only the option that it may either impose it or not to impose it. However, the law does not and cannot indicate unequivocally as to when the death penalty must be imposed. Therefore, it is possible to assert that, in such a case, the final decision concerning the imposition of the death penalty depends not only on the law, but also on a court. Consequently, the decision of whether or not to impose the death penalty may depend on the psychological state of judges (compassion or, on the contrary, strictness, the fear to adopt a wrong decision, etc.), on the professionalism and activity of the defence or the prosecution, as well as on numerous other subjective circumstances.

Finally, attention should be drawn to the circumstance that a court may face the difficulty to judge on the basis of objective criteria as to which individual deserves to be punished by death and which to be imprisoned for life. Besides, no matter what guarantees are ensured in criminal proceedings in a state under the rule of law, the possibility of a mistake always exists. As it is evident from judicial practice in various states, it is impossible to protect courts from such mistakes and, after the death penalty is carried out, no possibilities exist for rectifying such a mistake. The possibility itself that a person who does not deserve it or who is innocent may be sentenced to death is not in line with the right to life, guaranteed by the Constitution.

[...]

Taking account of ... the entirety of the norms of the Constitution (adopted by the nation in a referendum) that protect the right of a human being to life and dignity, the Constitutional Court holds that the Constitution does not contain any prerequisites for establishing the death penalty in a norm of a law.

Human life and dignity are exceptional values; the connection of these values with the right of individuals to the best possible health

The Constitutional Court's ruling of 16 May 2013

Human life and dignity are exceptional values expressing the integrity and singular essence of a human being (ruling of 9 December 1998). The state is under the constitutional obligation to protect and defend these values. ... It is clear that human dignity, the right to life, and the right to the best possible health are so tightly interrelated that, on the one hand, in cases where proper health protection is not ensured, the protection of the human right to life and human dignity will no longer be fully fledged; on the other hand, the right to sustaining and saving life where the life of a person is in danger is an inseparable and fundamental part of the human right to the best possible health.

2.2.2. Human dignity and the inviolability of the human person

The prohibition on torturing or injuring human beings, degrading their dignity, subjecting them to cruel treatment, or establishing such punishments (Paragraph 3 of Article 21 of the Constitution)

The Constitutional Court's ruling of 9 December 1998

Paragraph 3 of Article 21 of the Constitution prescribes: "It shall be prohibited to torture or injure a human being, degrade his dignity, subject him to cruel treatment, or to establish such punishments." ...

[...]

First of all, it should be noted that Paragraph 3 of Article 21 of the Constitution ... links the prohibition on torturing or injuring a human being, degrading his/her dignity, or subjecting him/her to cruel treatment or cruel punishments with the activities of the state and its institutions. This means that such prohibitions are established in an attempt to protect an individual from the unlawful actions of a state official or any other person authorised by the state.

Analysing the conduct that is prohibited by the Constitution, it needs to be noted that not every action that is performed by officials and has adverse effects on an individual may be judged to be unlawful. For instance, negative consequences and, in certain respects, suffering appear after the imposition of sanctions provided for in the criminal law and recognised by the international community in cases where such sanctions establish the respective restrictions on a person (e.g. the deprivation of liberty, a fine, limitations on rights, etc.). Such restrictions constitute a compulsory element of punishment and problems never arise as to their lawfulness. This means that such cases where, for instance, a suspect is apprehended or a person is punished by the deprivation of liberty following a court decision and, due to this, such a person suffers or experiences certain inconveniences may not be treated as punishments prohibited by the Constitution.

The death penalty should be assessed differently. It is generally recognised that it is cruel. However, it cannot be failed to mention the following aspect: the death penalty is provided for a murder committed under aggravating circumstances. Thus, it should be held that, in such a case, two aspects of cruelty come into collision: the cruelty of a crime and that of the punishment. Still, it should be recognised that the cruelty

of a crime as such does not counterbalance the cruelty of the death penalty. Meanwhile, continually repeated acts of cruelty cannot avoid exerting influence on the socio-psychological state of society and on the cultivation of tolerance for continuous cruelty.

Assessing the death penalty through the prism of the conduct prohibited by the Constitution, a specific aspect of the said penalty becomes apparent. The degradation of the dignity of a convict derives essentially from the cruelty of the death penalty itself. The cruelty manifests itself by the fact that, after the death sentence is carried out, the human essence of such a criminal is also denied, he/she is deprived of any human dignity, as the state in that case treats the person as a mere object to be eliminated from the human community.

The right to the inviolability of the human person (Paragraph 1 of Article 21 of the Constitution)

The Constitutional Court's ruling of 8 May 2000

The human right to the inviolability of the human person is enshrined in Paragraph 1 of Article 21 of the Constitution. The content of the inviolability of the human person as a value protected by law is composed of physical and psychological inviolability. This means that laws must guarantee that an individual will be protected against any unreasonable outward impact on his/her life, health, and freedom of physical activity and against any infringement on his/her psychological or mental state or intellectual or creative expression that might be carried out by state or municipal institutions, their officials or employees, as well as by any other persons.

The human right to physical liberty, which is established in Paragraph 1 of Article 20 of the Constitution, is closely connected with the human right to the inviolability of the human person. The inviolability of the liberty of an individual is a prerequisite for freedom of decision making; it creates the preconditions for performing any lawful actions and implementing legal possibilities in various spheres of life. It is possible to maintain that the inviolability of the human person establishes the limits of the liberty of other persons, i.e. the conduct of the latter is permissible as long as it is not harmful to the inviolability of the human person of another individual. ...

It needs to be emphasised that the human right to liberty and the inviolability of the human person may be subject to limitation where necessary. This may be done only on the grounds and in accordance with the procedure established in laws. Paragraph 2 of Article 20 of the Constitution states: "No one may be deprived of his liberty otherwise than on the grounds and according to the procedures established by law."

The protection and defence of human dignity (Paragraphs 2 and 3 of Article 21 of the Constitution)

The Constitutional Court's ruling of 29 December 2004

Paragraph 2 of Article 21 of the Constitution prescribes: "Human dignity shall be protected by law."

Dignity is an inalienable characteristic of a human being as the greatest social value. Every member of society has innate dignity. In its ruling of 9 December 1998, the Constitutional Court held that innate human rights are the innate possibilities of an individual that ensure his/her human dignity in the spheres of social life. It should be noted that dignity is characteristic of every human being, irrespective of how he/she assesses himself/herself or other people assess him/her.

Paragraph 2 of Article 21 of the Constitution should also be interpreted within the context of Paragraph 3 of this article. It is established in Paragraph 3 of Article 21 of the Constitution, *inter alia*, that it is prohibited to degrade the dignity of a human being. Thus, the Constitution establishes the duty of the state to ensure the protection and defence of human dignity. The fact that the legislature, while regulating relationships linked with the implementation of human rights and freedoms, must guarantee their proper protection constitutes one of the conditions for the ensuring of human dignity as a constitutional value.

The duty of the state to ensure the protection and defence of human dignity also means that state institutions and officials may not unreasonably limit human rights and freedoms, treat an individual solely as a subject belonging to a particular social, economic, professional, or another category. In every case, an

individual must be regarded as a free personality, whose human dignity should be respected. State institutions and officials have the duty to respect human dignity as a special value. Violations of human rights and freedoms may also undermine human dignity.

The protection and defence of human dignity

The Constitutional Court's ruling of 19 August 2006

In protecting and defending human rights and freedoms (and, in general, individual rights and freedoms – not only those of natural persons, but also those of legal persons), *inter alia*, human dignity, a particular importance falls on the institution of compensation for damage.

The right to the inviolability of the human person (Article 21 of the Constitution)

The Constitutional Court's ruling of 4 June 2012

... Article 21 of the Constitution gives rise to the duty of the legislature to establish such a legal regulation that would ensure the human right to the inviolability of the human person and would take all necessary measures to protect this right. The protection of the physical and psychological inviolability of a human being, *inter alia*, from criminal acts, is a constitutionally important objective and a public interest.

Human life and dignity are exceptional values; the connection of these values with the right of individuals to the best possible health

The Constitutional Court's ruling of 16 May 2013

Human life and dignity are exceptional values expressing the integrity and singular essence of a human being (ruling of 9 December 1998). The state is under the constitutional obligation to protect and defend these values. The Constitutional Court has held that innate human rights are the innate possibilities of an individual that ensure his/her human dignity in the spheres of social life; the fact that the legislature, while regulating the relationships connected with the implementation of human rights and freedoms, must guarantee their proper protection constitutes one of the conditions for ensuring human dignity as a constitutional value (rulings of 29 December 2004 and 2 September 2009 and the decision of 20 April 2010). It is clear that human dignity, the right to life, and the right to the best possible health are so tightly interrelated that ... in cases where proper health protection is not ensured, the protection of the human right to life and human dignity will no longer be fully fledged ...

The connections of human dignity with other constitutional values

The Constitutional Court's conclusion of 19 December 2017

... the dignity of an individual as a free personality is inseparable from the inviolability of the human person and ... the content of the inviolability of the human person is composed of physical and mental inviolability. The inviolability of the human person is a necessary precondition for the expression of the freedom of physical activity, intellectual and creative freedoms of the person, thus, also for the expression of the free personality of the person; an infringement on the inviolability of the human person disturbs the physical, mental, or spiritual state of the person; thus, human dignity as a special constitutional value is also violated. Therefore, the guarantee of the inviolability of the human person, as consolidated in Paragraph 1 of Article 21 of the Constitution, should be regarded as one of the elements of the constitutional protection of human dignity.

The constitutional protection of human dignity is also enshrined in other provisions of the Constitution as, for instance, in Paragraph 4 of Article 22 thereof, whereby no one may be subject to arbitrary or unlawful interference with his/her private and family life, as well to encroachment upon his/her honour and dignity. Thus, under the Constitution, the protection of human dignity is inseparable from the protection of the private life of a person, which is guaranteed in Paragraph 1 of Article 22 of the Constitution, according to which private life is inviolable.

... an arbitrary and unlawful interference with the private life of an individual is, at the same time, an infringement on his/her honour and dignity (*inter alia*, the rulings of 29 December 2004 and 21 December 2006).

... the physical and mental inviolability of a person comprises the content of the inviolability of the human person and is covered by the right of a person to privacy. Accordingly, an infringement on the inviolability of the human person – his/her physical or mental inviolability – is simultaneously an arbitrary and unlawful interference with his/her private life and, thus, also an infringement on his/her honour and dignity. In view of this, the guarantee of the inviolability of the private life of a person, which is consolidated in Paragraph 1 of Article 22 of the Constitution, as well as the guarantee of the inviolability of the human person, enshrined in Paragraph 1 of Article 21 of the Constitution, should be considered an element of the constitutional protection of human dignity.

The prohibition of discrimination against persons on the grounds of gender, race, nationality, language, origin, social status, belief, convictions, or views, which arises from Article 29 of the Constitution, consolidating the principle of the equality of the rights of persons, should also be considered an element of the constitutional protection of human dignity.

[...]

... dignity is an inalienable characteristic of a human being as the greatest social value. All people by nature should be deemed equal in terms of their dignity and rights. Thus, discrimination prohibited under Article 29 of the Constitution in cases where human rights are restricted on the grounds of gender, race, nationality, language, origin, social status, belief, convictions, or views also degrades the dignity of the discriminated person.

Harassment as conduct degrading human dignity

See 2. The constitutional status of persons, 2.1. General provisions, 2.1.2. The principle of the equality (of the rights) of persons, the conclusion of 19 December 2017 (“Harassment as one of the forms of discrimination”).

2.2.3. The inviolability of human liberty

The constitutional grounds for restricting human liberty; limiting individual rights and freedoms, *inter alia*, the right to the inviolability of correspondence, of persons sentenced to the deprivation of liberty

The Constitutional Court’s ruling of 24 March 2003

Paragraph 1 of Article 20 of the Constitution provides that human liberty shall be inviolable. Under Paragraph 2 of the same article, no one may be deprived of his/her liberty otherwise than on the grounds and according to the procedures established by law.

A person who has committed a criminal act may be given a sentence of the deprivation of liberty. Such a sentence must be established in a law. Under Paragraph 4 of Article 31 of the Constitution, punishment may be imposed or applied only on the grounds established by law. In the Republic of Lithuania, justice is administered only by courts (Paragraph 1 of Article 109 of the Constitution). Punishment may be imposed only on the basis of a court sentence.

Thus, the Constitution provides that the liberty of a person who commits a crime may be restricted on the grounds and according to the procedure established by law. On restricting the liberty of such a person, his/her rights and freedoms, including the inviolability of correspondence, may be subject to limitation.

The persons sentenced to the deprivation of liberty are isolated from society in places of detention, in which their conduct is under control; convicts may be searched, their correspondence may be censored, etc. Limitations imposed on convicts are objective elements constituting the content of the punishment of the deprivation of liberty; without these limitations, the deprivation of liberty would lose its sense. Thus, the censorship of the correspondence of convicts is permitted in places of detention, because it constitutes a means of control over the conduct of convicts. According to the Constitution, the grounds and procedure

for the censorship of the correspondence of convicts, as one of the elements of the content of the punishment of the deprivation of liberty, must be established by means of a law.

Under the Constitution, a person is declared guilty of committing a crime and is sentenced only by an effective court judgment. Such a court judgment empowers the institutions that execute sentences and supervise the lawfulness of the execution of sentences to impose on a convict those limitations on rights and freedoms that are associated with the type of punishment imposed on him/her, including the censorship, on the grounds established in the law and in accordance with the procedure provided for in the law, of the correspondence of a person sentenced to the deprivation of liberty.

When establishing a legal regulation limiting the human rights and freedoms, as well as the right to the inviolability of correspondence, of persons sentenced to the deprivation of liberty, the legislature is bound by the Constitution. According to the Constitution, the right of convicts to the inviolability of correspondence may be limited only by means of a law specifying the grounds and procedure for this limitation. The limitation in question must be such that would result in a reasonable relationship between the chosen measures and the pursued legitimate and universally important objective. To achieve this objective, such measures may be established that would be sufficient and would limit the rights of the person not more than it is necessary (rulings of 6 December 2000 and 2 October 2001). The Constitutional Court has noted that the protection of common interests in a democratic state under the rule of law may not deny any concrete human right or freedom in general and that the established and applied restrictions may not violate the essence of any particular human right (rulings of 9 December 1998 and 24 March 2003).

Limiting the right of persons sentenced to the deprivation of liberty to the inviolability of correspondence (Paragraphs 1 and 2 of Article 22 of the Constitution)

See 2.2.4. The inviolability of private life, the ruling of 26 February 2015.

2.2.4. The inviolability of private life

The right to privacy (Article 22 of the Constitution)

The Constitutional Court's ruling of 21 October 1999

Article 22 of the Constitution prescribes:

“Private life shall be inviolable.

Personal correspondence, telephone conversations, telegraph messages, and other communications shall be inviolable.

Information concerning the private life of a person may be collected only upon a justified court decision and only according to the law.

The law and courts shall protect everyone from arbitrary or unlawful interference with his private and family life, as well as from encroachment upon his honour and dignity.”

The norms established in this article of the Constitution protect the right of an individual to privacy. This right includes private, family, and home life, the physical and psychological inviolability of an individual, his/her honour and reputation, the secrecy of personal facts, the prohibition on making public the received or acquired confidential information, etc. If the private life of an individual is interfered with in an arbitrary and unlawful manner, then, at the same time, his/her honour and dignity are encroached upon.

Persons may not expect privacy if they perform acts of a public nature or violate legal norms, commit crimes or other violations of law

The Constitutional Court's ruling of 8 May 2000

The legal concept of private life is linked with the state of an individual when he/she may expect privacy or with legitimate expectations for private life. If a person performs acts of a public nature, whether at home or on other private premises, and if he/she understands, must understand, or is capable of

understanding such a fact, then such actions of a public nature will not be protected under Article 22 of the Constitution ... and such a person may not expect privacy.

The activities of state and municipal officials linked with the performance of the functions of state and municipal power and administration are always of a public nature. In a democratic state under the rule of law, the public performance of duties by state officials and state servants is one of the essential principles of protection against their arbitrariness or abuse.

In cases where a person violates the norms of private law that regulate commercial or any other secrets of private nature, he/she may not expect complete privacy, either. For example, a contracting party to an agreement containing a commercial secret applies to a court or another institution that settles disputes; the said contracting party reveals the content of the agreement and requests that the party that breached it fulfil the conditions of the agreement and pay damages. In such a case, after breaching the conditions of the agreement, the party that breached them may not expect that the other party to the agreement would not defend its rights before a court or another institution that settles disputes.

The Constitutional Court notes that a person who commits criminal acts or acts contrary to law must not and may not expect privacy. The limits of the protection of the private life of an individual cease to exist in cases where, by his/her actions or in a criminal or any other unlawful manner, he/she violates the interests protected by law, or inflicts damage on particular persons, society, or the state.

The guarantees of the inviolability of private life (Paragraphs 3 and 4 of Article 22 of the Constitution)

The Constitutional Court's ruling of 19 September 2002

The provision "Information concerning the private life of a person may be collected only upon a justified court decision and only according to the law" of Paragraph 3 of Article 22 of the Constitution and the provision "The law and courts shall protect everyone from arbitrary or unlawful interference with his private and family life, as well as from encroachment upon his honour and dignity" of Paragraph 4 of the same article are among the most important guarantees of the inviolability of the private life of a person. The said provisions protect the private life of a person against unlawful interference by state or other institutions, their officials, or other persons.

A balance between the inviolability of private life and freedom of information (Articles 22 and 25 of the Constitution); compensation for damage inflicted as a result of imparting information about private life (Paragraph 2 of Article 30 of the Constitution)

The Constitutional Court's ruling of 23 October 2002

The provisions of Article 22 of the Constitution, which consolidate the inviolability of private life, are related to other provisions of the Constitution and must be interpreted while taking account of them ... There is a balance among the values consolidated in Articles 22 and 25 of the Constitution. In the course of the regulation of the relationships connected with informing the public, the duty arises for the legislature to pay regard to the balance of the said constitutional values.

[...]

... There are such areas of private life (e.g. intimate life) the information about which may neither be collected nor published without the consent of the person, unless (and only inasmuch as) this helps to detect a crime committed by that person.

Article 28 of the Constitution provides that, while implementing his/her rights and exercising his/her freedoms, everyone must observe the Constitution and laws of the Republic of Lithuania and may not restrict the rights and freedoms of other people. Under Paragraph 2 of Article 30 of the Constitution, compensation for material and moral damage inflicted on a person is established by law. The legislature has the duty to stipulate by means of a law that, in cases where information about the private life of an individual is imparted without the consent of that individual and, due to this, damage is inflicted on the said individual (with the exception of cases where the dissemination of such information helps to detect crimes

or violations of law, or where the said dissemination discloses such circumstances of the private life of the said person that are of public importance), then the inflicted damage must be compensated. Such compensation for damage includes both material and moral damage. Compensation must be adequate for the material and/or moral damage inflicted.

Imparting information about the private life of public persons

The Constitutional Court's ruling of 23 October 2002

... the personal characteristics, conduct, and certain circumstances of the private life of persons participating in social and political activities may be important for public affairs. The interest of the public to know more about these persons than about others is constitutionally justifiable. The said interest would not be ensured if, in every particular case, when publishing the information of public importance about the private life of a person participating in social and political activities, the consent of the said person were necessary. Consequently, the media may inform the public about the private life of such a person without the consent of that person inasmuch as the personal characteristics, conduct, and certain circumstances of the private life of the said person may be important for public affairs; due to this, the published information is of public importance. A person participating in social and political activities can expect increased public and media attention towards him/her. Such persons, as a rule, are called public persons.

Persons who, due to the office that they hold or due to the nature of the work that they perform, participate in public life should be categorised as public persons in the first place. They are politicians, state or municipal officials, or the heads of public organisations. Other persons may also be considered public persons if their activity is important for public affairs.

The Constitution does not use the notion of a public person. When establishing the institution of a public person, the legislature must define the criteria under which certain persons may be categorised as public persons. It needs to be noted that the post of a person or his/her participation in social activity in itself may not be considered necessary or sufficient criteria under which such a person could be categorised as a public person. The legislature, when establishing, by means of a law, the criteria under which a person may be categorised as a public person, must pay regard to the balance between the right of an individual to privacy, enshrined in Article 22 of the Constitution, and the interest of the public, which is guaranteed and safeguarded by the Constitution, to be informed about all factors capable of exerting influence on public affairs.

It needs to be noted that certain facts of the private life of public persons and their personal characteristics, as a rule, naturally reveal themselves in their public activity. In its ruling of 8 May 2000, the Constitutional Court held that, when a person performs acts of a public nature, whether at home or on other private premises, and if he/she understands, must understand, or is capable of understanding such a fact, such actions of a public nature will not be protected under Article 22 of the Constitution and such a person may not expect privacy.

The inviolability of private life (Article 22 of the Constitution)

The Constitutional Court's ruling of 24 March 2003

The Constitution provides that private life is the personal life of an individual: the way of life, marital status, living surroundings, relationships with other people, the views, convictions, or habits of an individual, his/her physical or psychological state, health, honour, dignity, etc. The inviolability of private life, established in Article 22 of the Constitution, implies the right of a person to privacy. The right of an individual to privacy includes the inviolability of private, family, and home life, the inviolability of honour and reputation, the physical and psychological inviolability of a person, the secrecy of personal facts, the prohibition on making public the received or acquired confidential information, etc. (rulings of 21 October 1999, 8 May 2000, 19 September 2002, and 23 October 2002).

The human right to privacy is not absolute. Under the Constitution, it is allowed to impose limitations on constitutional human rights and freedoms, including the right to privacy, if the following conditions are observed: the limitations are established by means of a law; the limitations are necessary in a democratic

society in order to protect the rights and freedoms of other persons, the values consolidated in the Constitution, and the constitutionally important objectives; the limitations do not deny the nature and essence of rights and freedoms; and the constitutional principle of proportionality is followed (rulings of 19 September 2002 and 23 October 2002).

The legal concept of private life is linked with legitimate expectations for private life held by a person. If a person commits criminal acts or acts contrary to law, violates the interests protected by law, or inflicts damage on particular persons, society, or the state, he/she is aware, or must and can be aware, of the fact that this will lead to the particular reaction of state institutions and that, for a breach of law being committed (or one already committed), the state may apply coercive measures through which a certain influence will be exerted on his/her conduct. It needs to be noted that a person who has committed a criminal act must not and may not expect that his/her private life will be protected in a manner equal to that of persons who do not violate laws.

Limiting the right of persons sentenced to the deprivation of liberty to the inviolability of correspondence

See 2.2.3. The inviolability of human liberty, the ruling of 24 March 2003 (“The constitutional grounds for restricting human liberty; limiting individual rights and freedoms, *inter alia*, the right to the inviolability of correspondence, of persons sentenced to the deprivation of liberty”).

Limiting the right to privacy by means of preventive measures aimed at reducing organised crime

The Constitutional Court’s ruling of 29 December 2004

... in cases where data, received in accordance with the procedure established in laws, about the relations of persons with organised criminal groups, criminal syndicates, or their members, constitute a sufficient basis for considering that those persons may commit grave crimes, i.e. where particular activity of persons or their relations prove to be a threat to constitutional values, *inter alia*, human rights and freedoms, the constitutional order, the safety of society and the state, as well as public order, it is allowed to establish, by means of a law, preventive measures that provide for certain control over the conduct of the said persons. As such, the preventive measures that are aimed at limiting and reducing organised crime should not be considered a constitutionally unreasonable limitation on the human right to privacy, but only provided that they are established by means of a law, they are necessary in a democratic society in order to ensure the rights and freedoms of other persons and values consolidated in the Constitution, they do not deny the nature and essence of the right of an individual to privacy, they are proportionate to the objective sought and this objective may not be attained by any other means. When applying the aforementioned preventive measures, jurisdictional and other law-applying institutions must assess in every case a particular situation, investigate all important circumstances, and find out whether the same objectives may be attained without interfering with the private life of an individual and the privacy of family life and without limiting the human right to privacy more than necessary in order to achieve the said important social and constitutionally justifiable objective.

In order to protect a person from arbitrary and unlawful restriction of his/her privacy, preventive measures interfering with the exercise of the human right to private life may be imposed only on the basis established in a law, only by following the procedure established in a law, and only by providing for the right of a person to file a complaint with a court against an imposed preventive measure.

Limiting the right of persons sentenced to the deprivation of liberty to the inviolability of correspondence (Paragraphs 1 and 2 of Article 22 of the Constitution)

The Constitutional Court's ruling of 26 February 2015

Article 22 of the Constitution, *inter alia*, prescribes: "Private life shall be inviolable" (Paragraph 1); "Personal correspondence, telephone conversations, telegraph messages, and other communications shall be inviolable" (Paragraph 2).

In this context, it should be noted that personal correspondence, the inviolability of which is protected under the Constitution, is an important form of maintaining social relations. Under Paragraph 2 of Article 22 of the Constitution, the right to the inviolability of correspondence is equally protected with regard to persons whose liberty has been restricted on the grounds and under the procedure provided for by law. However, the right of a person to the inviolability of correspondence, which is consolidated in Paragraph 2 of Article 22 of the Constitution, is not absolute.

The Constitutional Court, *inter alia*, while interpreting Paragraph 2 of Article 22 of the Constitution, has noted that the legal concept of private life is linked with the legitimate expectations of the private life of a person; if a person commits criminal acts or acts contrary to law, violates the interests protected by law, or inflicts damage on particular persons, society, or the state, he/she is aware, or must and can be aware, of the fact that this will lead to the particular reaction of state institutions and that, for a breach of law being committed (or one already committed), the state may apply coercive measures through which a certain influence will be exerted on his/her conduct; a person who has committed a criminal act must not and may not expect that his/her private life will be protected in a manner equal to that of persons who do not violate laws (ruling of 24 March 2003).

Under the Constitution, the liberty of persons who have committed crimes may be restricted on the grounds and under the procedure established in laws; upon the restriction of the liberty of such persons, their rights and freedoms may be limited, including the inviolability of correspondence (ruling of 24 March 2003).

When establishing a legal regulation limiting the human rights and freedoms, as well as the right to the inviolability of correspondence, of persons sentenced to the deprivation of liberty, the legislature is bound by the Constitution; according to the Constitution, the right of convicts to the inviolability of correspondence may be limited only by means of a law specifying the grounds and procedure for this limitation (ruling of 24 March 2003). The said limitation must be such that would result in a reasonable relationship between the chosen measures and the pursued legitimate and universally important objective; to achieve this objective, such measures may be established that would be sufficient and would limit the rights of a person not more than it is necessary (rulings of 6 December 2000, 2 October 2001, and 24 March 2003). The Constitutional Court has emphasised that the protection of common interests in a democratic state under the rule of law may not deny any concrete human right or freedom in general and that the established and applied restrictions may not violate the essence of any particular human right (rulings of 9 December 1998 and 24 March 2003).

[...]

... under the Constitution, *inter alia*, the constitutional principle of a state under the rule of law, where necessary for the purposes of achieving a legitimate and universally important objective, a law may provide for certain limitations on the right of a person to the inviolability of correspondence, which is consolidated in Paragraph 2 of Article 22 of the Constitution, *inter alia*, limitations on the right of convicts to correspondence; the requirement arises for the legislature to establish such a legal regulation that would create the preconditions for the sufficient individualisation of limitations on this right of convicts, once the individual situation of convicts and other important circumstances are assessed.

The connection of the inviolability of private life with the protection of human dignity (Paragraphs 1 and 4 of Article 22 of the Constitution)

The Constitutional Court's conclusion of 19 December 2017

The constitutional protection of human dignity is also enshrined in ... Paragraph 4 of Article 22 [of the Constitution], whereby no one may be subject to arbitrary or unlawful interference with his/her private and family life, as well to an infringement on his/her honour and dignity. Thus, under the Constitution, the protection of human dignity is inseparable from the protection of the private life of a person, which is guaranteed in Paragraph 1 of Article 22 of the Constitution, according to which private life is inviolable.

[...]

... the physical and mental inviolability of a person comprises the content of the inviolability of the human person and is covered by the right of a person to privacy. Accordingly, an infringement on the inviolability of the human person – his/her physical or mental inviolability is simultaneously an arbitrary and unlawful interference with his/her private life and, thus, also an infringement on his/her honour and dignity. In view of this, the guarantee of the inviolability of the private life of a person, which is consolidated in Paragraph 1 of Article 22 of the Constitution, as well as the guarantee of the inviolability of the human person, enshrined in Paragraph 1 of Article 21 of the Constitution, should be considered an element of the constitutional protection of human dignity.

Harassment violates human rights to the inviolability of the human person and private life

See 2. The constitutional status of persons, 2.1. General provisions, 2.1.2. The principle of the equality (of the rights) of persons, the conclusion of 19 December 2017 (“Harassment as one of the forms of discrimination”).

The limitation of the human right to privacy, *inter alia*, the right to the protection of family life (Paragraphs 1 and 4 of Article 22 of the Constitution)

The Constitutional Court's ruling of 11 January 2019

... under the Constitution, the right of a person to privacy is not absolute (ruling of 29 December 2004). ... the right to the protection of family life, which is guaranteed under Paragraph 4 of Article 22 of the Constitution, is not absolute, either.

As the Constitutional Court has more than once emphasised in its rulings, under the Constitution, it is allowed to limit the rights and freedoms of a person if the following conditions are observed: the limitations are established by means of a law; the limitations are necessary in a democratic society in order to protect the rights and freedoms of other persons, the values consolidated in the Constitution, and the constitutionally important objectives; regard is paid to the constitutional principle of proportionality (*inter alia*, the rulings of 26 January 2004, 21 June 2011, and 9 May 2014), according to which the rights and freedoms of a person may not be limited by means of a law more than necessary in order to reach the legitimate objectives important to society (rulings of 7 July 2011, 14 April 2014, and 17 February 2016); the protection of common interests in a democratic state under the rule of law may not deny a particular human right or freedom as such (rulings of 9 December 1998, 24 March 2003, and 26 February 2015).

... the above-mentioned conditions for limiting the rights and freedoms of persons are also applicable in limiting the right of a person, as established in Article 22 of the Constitution, to privacy, *inter alia*, to the protection of private and family life. It needs to be emphasised that, when certain limitations, which are necessary in a democratic society in order to reach the constitutionally important objectives, are established by means of a law with respect to the exercise of the right to private and family life, it is also necessary to follow the constitutional principles of the equality of the rights of persons and proportionality; otherwise, human dignity, protected under Paragraphs 2 and 3 of Article 21 of the Constitution, would be violated, i.e. the preconditions would be created for degrading human dignity while denying the free personality of the person and his/her inherent equality with other people in terms of human dignity. In this context, it

should be mentioned that only a state that has respect for the dignity of every person can be considered to be truly democratic (conclusion of 19 December 2017).

The inviolability of private life (Article 22 of the Constitution)

The Constitutional Court's ruling of 18 April 2019

... Paragraphs 1–4 of Article 22 of the Constitution, which guarantee the right of a person to privacy, *inter alia*, the right to respect for private life and to its inviolability, as well as the right to the inviolability of personal correspondence, telephone conversations, and other communications, and consolidate the prohibition of an arbitrary or unlawful interference with private and family life, as well as the prohibition of an infringement on the honour and dignity of a person ... are interrelated and should be interpreted in conjunction with one another; it would not be possible to properly ensure the right of a person to respect for his/her private life, honour, and dignity, as well as the right to the inviolability of his/her correspondence or other communications, if information on the private life of the person were collected in a manner different from that provided for in Paragraph 3 of Article 22 of the Constitution, i.e. not exclusively upon a reasoned court decision and not exclusively according to the law, or if laws did not establish the respective guarantees for the protection of the rights of a person, which are meant to protect the person from an arbitrary or unlawful interference with his/her personal and family life.

At the same time, it is worth mentioning that the private life of a person is a broad category, which is difficult to define for all cases. The right of a person to respect for his/her private life, which is consolidated in Article 22 of the Constitution, and the protection of this right should be interpreted extensively on the basis of the principle of the dynamic interpretation of human rights, taking into account, *inter alia*, societal development, as well as scientific and technological progress, which increasingly gives more possibilities of interfering with the private life of a person as, for instance, for the purposes of preventing crime or achieving other objectives of public order, by collecting, storing, using, and retaining not only samples of a person's fingerprints and his/her voice, but also a person's cellular or DNA samples, or by carrying out, by technological means, the mass monitoring and surveillance of cyber spaces used by individuals, *inter alia*, the tracking of the location of individuals via the Global Positioning System (GPS).

... under the Constitution, *inter alia*, Article 22 thereof, the principle of respect for the private life of a person implies the positive duties of the state to take the respective measures while seeking to ensure the right of a person to the protection of his/her private and family life, including the protection of his/her honour and dignity, in the course of, *inter alia*, secretly collecting information about that person for criminal justice or other lawful purposes, as well as using such information in the cases and according to the procedures provided for in laws.

[...]

... if any person, *inter alia*, a state servant (official), commits criminal or other acts that are contrary to law as, for instance, misconduct in office, he/she must be aware that, under the Constitution, *inter alia*, Article 22 thereof, and the constitutional principle of a state under the rule of law, such his/her actions will trigger an appropriate reaction from the authorised state institutions and that a violation of law that is being committed (or has already been committed) may lead to coercive measures lawfully and reasonably enforced by the state, and these coercive measures will not only have a certain effect on the conduct of that person, but will also interfere with his/her private life. A person, *inter alia*, a state servant (official), who has committed a criminal or another act that is contrary to law, *inter alia*, misconduct in office, or has otherwise violated the interests protected by law, or has inflicted damage on individual persons, society, or the state should not and cannot expect that his/her private life will be protected in the same way as the private life of persons who do not violate laws or who act in the public interest.

It needs to be noted that Paragraphs 3 and 4 of Article 22 of the Constitution consolidate the duty of the legislature to establish, by means of a law, the procedure for collecting information on the private life of a person (ruling of 19 September 2002).

... under the Constitution, *inter alia*, Article 22 thereof, and the constitutional principle of a state under the rule of law, the legislature, having established the powers of state institutions to secretly collect, in the

cases and according to the procedure established by means of a law, information about persons for the purposes of criminal justice or other legitimate purposes, is also obliged to establish, by means of a law, the cases and conditions of the use of such collected information, *inter alia*, to consolidate the possibility of transferring this information to other state institutions for use for other legitimate purposes established in laws, including for the investigation of misconduct in office.

2.2.5. The right of ownership

2.2.5.1. The protection of the right of ownership

The inviolability of property; limiting the rights of ownership (Article 23 of the Constitution)

The Constitutional Court's ruling of 13 December 1993

The inviolability of property means, on the one hand, the right of the owner as the possessor of subjective rights to property, to require that other persons not violate his/her rights, as well as, on the other hand, the duty of the state to defend and protect ownership against unlawful encroachment on it.

... On the other hand, the subjective rights, i.e. the rights of an owner, to possess, use, and dispose of property can be limited by means of laws due to the nature of the property possessed (e.g. weapons, narcotic substances, etc.), or if this is necessary for the public interest (ecological issues, etc.), or due to acts performed by the owner. ...

Limitations on property rights may also stem from international treaties, because international treaties that are ratified in compliance with Paragraph 3 of Article 138 of the Constitution are a constituent part of the legal system of the Republic of Lithuania.

Ownership relationships are regulated only by means of laws (Paragraph 2 of Article 23 of the Constitution)

The Constitutional Court's ruling of 15 July 1994

Paragraph 2 of Article 23 of the Constitution provides that the rights of ownership are protected by law. Thus, ownership relationships may be regulated only by means of laws and they may not be regulated by means of statutory acts.

Limiting the rights of ownership (Paragraph 3 of Article 23 and Article 28 of the Constitution)

The Constitutional Court's ruling of 8 April 1997

... the right to possess property is one of innate human rights. Any limitation on ownership rights, along with the establishment of sanctions prescribed by means of legal norms, must be precise and, if necessary, detailed enough. Laws must ensure that unreasonable restriction on ownership rights is avoided and that it would always be possible to protect these rights in a court, since Article 30 of the Constitution prescribes that a person whose constitutional rights or freedoms are violated has the right to apply to a court.

The conclusion should be drawn from the analysis of the content of Articles 23 and 28 of the Constitution that it is possible to establish, by means of laws, limitations on ownership rights, as well as property sanctions for violations of law. However, this must not deny the essence of the right of ownership.

The inviolability of property and the defence of ownership rights (Paragraphs 1 and 2 of Article 23 of the Constitution)

The Constitutional Court's ruling of 1 June 1998

The principle of the inviolability of property is consolidated in Paragraph 1 of Article 23 of the Constitution: "Property shall be inviolable." Thus, only an owner, as a possessor of subjective rights to property, has the exclusive right to possess, use, and dispose of it. At the same time, an owner has the right to demand that other natural and legal persons, as well as the state, not violate his/her ownership rights.

Paragraph 2 of Article 23 of the Constitution prescribes: “The rights of ownership shall be protected by law.” Consequently, the state has the obligation to pass the respective laws and, on the basis thereof, to protect ownership. For that purpose, the system of the respective legal norms is created, the aim of which is to ensure the possibility for an owner to use, possess, and dispose of his/her property at his/her discretion, as well as to defend and protect the right of ownership from violations. It is not possible to assert, however, that, in implementing his/her subjective ownership rights, an owner is absolutely free. Neither the Constitution nor universally recognised international legal norms deny the possibility of establishing, by means of laws, certain limits on the possession, use, or disposal of property. At the same time, such limitations may not deny the essence of the right of ownership.

When the content of Paragraphs 1 and 2 of Article 23 of the Constitution is interpreted, account should be taken of Article 28 of the Constitution, wherein it is prescribed: “While implementing his rights and exercising his freedoms, everyone must observe the Constitution and laws of the Republic of Lithuania and must not restrict the rights and freedoms of other people.” ... an owner, when implementing his/her subjective ownership rights, must take into consideration the public interest.

The inviolability of property; taking property for the needs of society (Article 23 of the Constitution)

The Constitutional Court’s ruling of 18 June 1998

Article 23 of the Constitution prescribes:

“Property shall be inviolable.

The rights of ownership shall be protected by law.

Property may be taken only for the needs of society according to the procedure established by law and shall be justly compensated for.”

The function of these constitutional norms is many-sided. The chief purpose of the norms consolidated in Article 23 of the Constitution is to ensure the protection of the subjective rights of a person to the ownership of the property possessed by him/her. As regards the constitutional guarantee of the inviolability of property, it should be noted that, in the legal language, the word “inviolability” is, as a rule, understood as an inviolable, inalienable human right. In this respect, the fact of great importance is that the Constitution itself establishes the requirements of protective nature that must be observed when the necessity arises to take private property for the needs of society. Taking property for the needs of society, as indicated in Paragraph 3 of Article 23 of the Constitution, is understood as an individual decision concerning taking property held in private ownership, which is made in every concrete case according to the procedure established by means of laws.

... It is evident that the constitutional guarantee of the inviolability of property and the constitutional regulation of taking private property for the needs of society deny the possibility of general nationalisation without compensation.

The protection of intellectual property (Article 23 and Paragraph 3 of Article 43 of the Constitution)

The Constitutional Court’s ruling of 5 July 2000

The norms of Article 23 of the Constitution ensure the protection of the rights of ownership. The inviolability of property, as consolidated in this article, obligates other persons not to infringe the rights of an owner and obligates the state to protect and defend the rights of ownership. Intellectual property is also under protection under Article 23 of the Constitution.

Intellectual property covers the copyright to works of literature, science, and art (books, brochures, articles, diaries, other pieces of literature, computer software, speeches, lectures, sermons and other verbal works, pieces of music with or without a text, audio-visual works (cinema films, television films, video films, slide films, other works made by means of cinematography)), etc. Intellectual property also includes the rights of performers, producers of phonograms, broadcasting organisations and producers of the first fixation of an audio-visual work (film) (related rights).

The Constitution is an integral and directly applicable act; therefore, while investigating the compliance of impugned norms with Article 23 of the Constitution, account should also be taken of the fact that the protection and defence of the rights and interests of authors is also provided for in Paragraph 3 of Article 42 of the Constitution, which stipulates that the law protects and defends the spiritual and material interests of an author that are related to scientific, technical, cultural, and artistic work.

The protection of property is guaranteed under the Constitution. Property acquired unlawfully does not become the property of the person who has acquired it. Thus, such a person does not acquire the rights of ownership, which are protected under the Constitution.

The illegal reproduction, circulation, public performance, other use by any means for commercial purposes of works of literature, science, or art (including computer software and databases), and/or video recordings (i.e. without the permission of the author or producer of an audio and/or video recording, or without the permission of a successor of their rights), as well as their storage for the said purposes, infringe copyright and related rights.

The defence of the rights and interests of an author against violations is a public interest; therefore, the legislature may provide for civil, administrative, or criminal responsibility for violations of the rights and interests of an author, depending on the nature of such violations.

The inviolability of property; taking property for the needs of society (Article 23 of the Constitution)

The Constitutional Court's ruling of 2 April 2001

... [Article 23] of the Constitution establishes the principle of the inviolability of property, which means that the right is guaranteed for a subject of ownership to demand that other persons not violate his/her rights of ownership. The legislature has the duty to pass laws protecting the ownership rights of owners from any unlawful encroachment. The Constitution guarantees that no one may take property in an arbitrary manner and not on the basis of law.

Under the Constitution, taking property for the needs of society is understood as an individual decision concerning taking property held in private ownership, which is made in every concrete case according to the procedure established by means of laws (ruling of 18 June 1998).

Paragraph 3 of Article 23 of the Constitution indicates the needs of society for which property may be taken according to the procedure established by means of a law and must be adequately compensated for. These are interests of all society or part thereof. The state, while carrying out its functions, is constitutionally obligated to ensure and satisfy such interests. When property is taken for the needs of society, it is important to seek a balance among various legitimate interests of society and its members.

The needs of society for which property is taken under Paragraph 3 of Article 23 of the Constitution are always specific and clearly expressed needs of society for a concrete object of property. Under the Constitution, it is permitted to take property (by fairly compensating for it) only for such public needs that could not be objectively satisfied if a certain concrete object of property were not taken.

Fair compensation must be established for property taken for the needs of society. This provision of Paragraph 3 of Article 23 of the Constitution also means that a person whose property is taken for the needs of society has the right to demand that the established compensation be equivalent in value to the taken property.

The right of succession (Article 23 of the Constitution)

The Constitutional Court's ruling of 4 March 2002

Article 23 of the Constitution consolidates the inviolability of property and the protection of the rights of ownership. These provisions of the Constitution also mean that an owner has the right to state in his/her will to whom his/her property will be left after his/her death; in cases where such a will has not been stated, he/she has the right that after his/her death his/her property will be inherited by the heirs established by law.

If the provisions of Article 23 of the Constitution are interpreted systemically, in the context of the overall constitutional regulation and, especially, in the context of the constitutional provisions establishing that the family is the basis of society and the state and providing for the duty of the state to protect and take care of family, motherhood, fatherhood, and childhood, as well as the right and duty of parents to support their children until they reach the age of majority and the duty of children to respect their parents, to take care of them in their old age, and to preserve their heritage (Paragraphs 1, 2, 6 and 7 of Article 38 of the Constitution), the duty of the state to protect under-age children by law (Paragraph 3 of Article 39 of the Constitution), as well as the provisions establishing constitutional human rights and their innate nature (Article 18 of the Constitution), etc., it should be held that the institution of succession stems from the Constitution. The Constitution guarantees the right to succession.

Under the Constitution, the relationships of succession must be regulated exclusively by means of a law. The legislature, when regulating these relationships, must observe the principles and norms of the Constitution. This means, *inter alia*, that it is not allowed to establish such a legal regulation that, on the one hand, would deny the will of a testator to leave his/her property as inheritance to other persons and that, on the other hand, in the absence of the testament of a deceased, would give priority not to the persons related to a deceased by family relations or relations of parents and children, i.e. the relationships that are consolidated in the Constitution, but to other persons. It needs to be noted that the legislature, when regulating the relationships of succession, must ensure a balance between the right of an individual to leave his/her property to other persons and other values protected by the Constitution.

[...]

... the legislature, when regulating the relationships of succession, may differentiate this regulation according to by what family or kinship relations certain persons were related to a testator.

The protection of the rights of ownership; limiting the rights of ownership; the social function of ownership (Article 23 of the Constitution); pharmacies as objects of the right of ownership

The Constitutional Court's ruling of 14 March 2002

Paragraph 1 of Article 23 of the Constitution provides that property is inviolable; Paragraph 2 of the same article of the Constitution provides that the rights of ownership are protected by law. These constitutional provisions imply that the Constitution, when guaranteeing the protection of ownership, also establishes the constitutional right to the acquisition of property and guarantees the protection of this right.

It should be noted that the constitutional right of a person to ownership is an essential (necessary) condition for the implementation of his/her freedom of economic activity. When limitations are imposed on the right of persons to ownership, freedom of individual economic activity is also limited.

The right of persons to ownership, freedom of economic activity, as well as most other rights and freedoms consolidated in the Constitution, are not absolute. While implementing his/her rights and exercising his/her freedoms, everyone must observe the Constitution and laws of the Republic of Lithuania and must not restrict the rights and freedoms of other people (Article 28 of the Constitution). ...

[...]

Under the Constitution, the right to ownership may be limited due to the nature of property and/or other reasons where the non-limitation of this right would make it impossible to protect the values consolidated in the Constitution and damage would be inflicted on the public interest.

[...]

... the right to ownership is a constitutional right of persons and ... the legislature, when imposing limitations on this right, is bound by the norms and principles of the Constitution: this right may not be limited more than it is necessary in a democratic society where the values consolidated in the Constitution, as well as the public interest, must be protected.

... under the Constitution, the existence of a public interest (constitutionally important objective) may serve as a ground for limiting the right of a person to ownership only in cases where the non-limitation of this right, due to the nature of property and/or other important reasons, would render the protection of the values consolidated in the Constitution impossible and would harm the public interest.

[...]

The social function of ownership must be emphasised. Ownership includes obligations (ruling of 21 December 2000). An owner, when enjoying the right to possess, use, and dispose of his/her property, may not violate laws and the rights of other persons. A pharmacy is an enterprise licensed for pharmaceutical activities, i.e. activities that are part of public health activities and are related to goods of a specific nature – medicines and medicinal substances; therefore, laws may and must impose such limitations on the subjective rights of the owners of pharmacies that, in the pharmacies owned by them, only individuals who have pharmaceutical education and hold the necessary qualification would be able to control the professional activities of pharmacists working in such pharmacies, would be able to head such pharmacies, and would be able to conduct managerial control in such pharmacies. Under the Constitution, laws must establish such a regulation of pharmaceutical activities that the economic interests of the owners of pharmacies would not cast into the shade the activities of pharmacies conducted in the interest of the health of people and public health promotion.

... Under the Constitution, it is prohibited to limit the right of ownership of a person on the basis of his/her education. The requirements relating to pharmaceutical education and the necessary qualification must be imposed on persons conducting pharmaceutical activities in pharmacies. It is not permitted to impose requirements relating to education on persons who wish to hold pharmacies by right of ownership.

The duty of non-state property entities to contribute, using their property, to the satisfaction of the special needs of society (i.e. the duty of telecommunication operators to ensure the technical possibility for the subjects of operational activities to exercise control over the content transmitted through telecommunication networks) (Article 23 of the Constitution)

The Constitutional Court's ruling of 19 September 2002

... the inviolability and protection of property, consolidated in Article 23 of the Constitution, also means that it is not permitted to introduce any such a legal regulation that would establish the continuing duty of non-state property entities to use their property to fulfil state functions, which must be financed from state funds; the duty may be established for non-state property entities to contribute, by using their property, to the satisfaction of the special needs of society inasmuch as such a duty to contribute to the satisfaction of these needs under extraordinary circumstances stems from the Constitution.

Thus, under the Constitution, the duty may be established for telecommunication operators – non-state property entities – to ensure and constantly maintain the technical possibilities necessary for the subjects of operational activities to control, under the procedure established in laws, the content of information transmitted through telecommunication networks; however, it is not permitted to establish the duty of telecommunication operators to maintain, at their expense, the technical possibilities of such facilities that are not necessary in the economic activity of the said telecommunication operators.

[...]

It needs to be noted that information transmitted through telecommunication networks is not the property of telecommunication operators.

Under the Constitution, the state must ensure the security of society and public order. ... the prevention, investigation, and detection of crimes is a public interest; therefore, in order to ensure the normal activities of law enforcement authorities that are performing the said functions, the necessary information must be provided for no consideration. This is also implied by the constitutional striving for an open, just, and harmonious civil society and a state under the rule of law.

The right to a pension from the aspect of the protection of property (Articles 23 and 52 of the Constitution)

The Constitutional Court's ruling of 25 November 2002

... in cases where the collection of funds necessary to pay pensions and the payment of pensions are based on social insurance (social insurance contributions), individuals themselves, to a certain extent, take

part in the creation of the material preconditions for the payment of these pensions. When the amounts of old-age pensions are established by means of a law, consideration should be given to the amount of the paid contributions in the course of creating the material preconditions for the payment of these pensions.

A person who meets the conditions established in a law in order to receive an old-age pension and has been granted and paid this pension has the right to the monetary benefit of the respective amount, i.e. the right to property. Under Article 23 of the Constitution, this right must be protected and defended.

The right to a pension from the aspect of the protection of property (Articles 23 and 52 of the Constitution)

The Constitutional Court's ruling of 3 December 2003

Interpreting the provisions of Article 23 of the Constitution, the Constitutional Court has held on more than one occasion that the inviolability of property and the protection of the rights of ownership mean, *inter alia*, that an owner, as the holder of subjective rights to property, has the right to demand that other persons not violate his/her rights and that the state has the duty to ensure the defence and protection of the rights of ownership.

... the Constitution is an integral act ... its provisions are interrelated and constitute a harmonious system. When revealing the content of the constitutional institution of the protection of the rights of ownership, account must be taken not only of Article 23 of the Constitution, but also of other provisions of the Constitution that reveal different aspects of the constitutional concept of the said right, as well as of Article 52 of the Constitution. In its ruling of 4 July 2003, the Constitutional Court held that the claims of a person for the payment of the pension granted to him/her are defended not only under Article 52 of the Constitution, but also under Article 23 of the Constitution. It needs to be noted that, in such a case, the right to demand that the pension provision benefits that are established in the Constitution and laws that are not in conflict with the Constitution be paid arises out of Article 52 of the Constitution, while the property aspects of the said right are defended under Article 23 thereof.

... the state has the duty to fulfil those obligations of property nature that it has undertaken by establishing, by means of a law, such a legal regulation according to which a person who meets the conditions provided for in a law acquires the right to a certain pension. Thus, a person who meets the conditions established in a law in order to receive an old-age pension and has been granted and paid this pension has the right to the monetary benefit of the respective amount, i.e. the right to property. Under Article 23 of the Constitution, this right must be protected and defended.

Thus, under Article 23 of the Constitution, persons who have been granted and paid a pension established by the Constitution or a law have the right to demand that pension benefits in the amounts granted and paid previously be continued to be paid to them. Naturally, the law that establishes the grounds for such pension provision, the persons who are granted and paid pensions, the conditions for granting and paying pensions, as well as the amounts of pensions, must be in conformity with the norms and principles of the Constitution.

... pensions that have been granted and paid under the Constitution may be reduced only in the event of an extreme situation in the state (economic crisis, a natural disaster, etc.), when there is an objective lack of funds for performing state functions and for satisfying public interests, including the payment of pensions. In such a case, the granted and paid pensions may be reduced to the extent that is necessary to ensure the vitally important interests of society and to protect other constitutional values. At the same time, it should be noted that the reduced pensions may be paid only on a temporary basis. In addition, in the event of implementing a reform of the pensionary system, some pensions may be eliminated and the amounts of other pensions may be reduced. In such a case, the legislature must establish a fair mechanism for compensating persons for the losses incurred due to such an amendment of the said regulation. Otherwise, the legal regulation according to which the payment of a granted and paid pension is terminated or reduced should be judged to be in violation of Paragraph 2 of Article 23 of the Constitution, which provides that the rights of ownership are protected by law.

The inviolability and protection of ownership; limiting the right of ownership; the social function of ownership (Article 23 of the Constitution)

The Constitutional Court's ruling of 13 May 2005

... Article 23 of the Constitution consolidates the imperatives of the inviolability of property and the protection of ownership. Private ownership as one of the bases of the national economy is consolidated in Paragraph 1 of Article 46 of the Constitution.

[...]

Interpreting Article 23 of the Constitution, the Constitutional Court has held on more than one occasion in its rulings that the inviolability of property and the protection of ownership, which are consolidated in this article, mean, *inter alia*, that an owner has the right to possess the property that belongs to him, also to use and dispose of it, as well as the right to demand that other persons not violate such his/her rights, and that the state has the duty to protect and defend ownership against unlawful encroachment on it.

The provision of Paragraph 2 of Article 23 of the Constitution, whereby the rights of ownership are protected by law, means that the legislative protection of the subjective rights of ownership is guaranteed. As a rule, the subjective right of ownership is defined as the possibility, which is protected by laws, for an owner to possess, at his/her discretion and in his/her interests, the property that belongs to him/her and to use and dispose of it; however, an owner may not overstep the limits established in laws, nor may he/she restrict the rights and freedoms of other persons (ruling of 16 March 1999). The said provision of Paragraph 2 of Article 23 of the Constitution also means that laws must protect the ownership rights of all owners, thus, including the right of ownership of the state as the organisation of all society (ruling of 30 September 2003).

The constitutional guarantee of the protection of the right of ownership is a *status quo* guarantee, since it protects, first of all, the ownership rights held by a person (rulings of 27 October 1998, 16 March 1999, and 4 March 2003).

The Constitutional Court has also held on more than one occasion that, under the Constitution, the right of ownership is not absolute and that this right can be limited by means of a law due to the nature of an object of ownership, due to the committed acts that are contrary to law, and/or due to a constitutionally justifiable need that is essential to society. Limitations on the right of ownership are permissible; however, in all cases, the following conditions must be observed: the right of ownership may be limited only on the grounds of a law; the limitations must be necessary in a democratic society in order to protect the rights and freedoms of other persons, the values consolidated in the Constitution, and/or constitutionally important objectives; it is necessary to follow the principle of proportionality, under which the measures provided for in laws must be in line with the sought objectives that are essential to society and are constitutionally justifiable. It needs to be emphasised that, under the Constitution, it is not allowed to deny the essence of the right of ownership by means of any limitation on the right of ownership; if the right of ownership were limited to the extent that its implementation becomes impossible, if the said right were restricted to the extent that reasonable limits would be exceeded, or its legal protection would not be ensured, in such a case, there would be grounds for asserting that the essence of the right of ownership is violated, which would be tantamount to denying the said right.

The constitutional imperative of social harmony, the constitutional principles of justice, reasonableness, and proportionality, as well as other provisions of the Constitution, imply that the inviolability of property and the protection of the subjective rights of ownership, which are consolidated in the Constitution, may not be interpreted as grounds to set in opposition the rights and interests of an owner and the public interest, or as grounds to set in opposition the rights and interests of an owner and the rights, freedoms, and legitimate interests of other persons. Ownership also performs a social function. Interpreting the provisions of Article 23 of the Constitution, the Constitutional Court has held that ownership includes obligations and that, by this provision, the social function of ownership is expressed (rulings of 21 December 2000, 14 March 2002, 19 September 2002, and 30 September 2003).

Taking property for the needs of society

The Constitutional Court's ruling of 23 November 2007

... interpreting the notion “needs of society” in the context of the institution of expropriation, the Constitutional Court has held that taking property for the needs of society is linked in the Constitution not with the fact who will receive the taken property, but with the objectives of the taking of property: to use a particular item in the interests of society, for the socially important objectives that can only be achieved by making use of the individual properties of a particular taken item; the needs of society cannot be interpreted as in all cases prohibiting the taking of property and transferring it into private ownership; the question of whether property is taken for the needs of society is not determined by the fact which subject (i.e. the state, a municipality, a legal or natural person) will subsequently become the owner of that property, but by the fact whether the property taken from the owner is really taken because it is necessary to satisfy the needs of society, i.e. socially important objectives that can only be achieved by making use of the particular taken property (ruling of 4 March 2003).

Taking property for the needs of society (Paragraph 3 of Article 23 of the Constitution)

The Constitutional Court's ruling of 20 May 2008

Under Article 23 of the Constitution, property may be taken from an owner only for the needs of society where it is justly compensated for; property may be taken for the needs of society only according to the procedure established by means of a law and must be justly compensated for. The Constitutional Court has held that Paragraph 3 of Article 23 of the Constitution indicates the needs of society for which property may be taken according to the procedure established by means of a law and must be justly compensated for. These are the interests of all society or part thereof. The state, while carrying out its functions, is constitutionally obligated to ensure and satisfy such interests; where property is taken for the needs of society, it is important to seek a balance among various legitimate interests of society and its members; the needs of society for which property is taken are always specific and clearly expressed needs of society for a concrete object of property; it is permitted to take property (by fairly compensating for it) only for such public needs that could not be objectively satisfied if a certain concrete object of property were not taken; a person whose property is taken for the needs of society has the right to demand that the established compensation be equivalent in value to the taken property (rulings of 2 April 2001 and 4 March 2003). Where a decision on taking property for the needs of society is adopted, it is essential at the same time to establish the amount of compensation for the taken property; in addition, it is necessary to establish a procedure according to which an owner will be compensated for the taken property. The legislature, irrespective of the fact which subject (i.e. the state, a municipality, a legal or natural person) becomes the owner of such property, has the duty to establish a legal regulation ensuring that the said property would be used for the needs of society in reality (ruling of 4 March 2003). In this context, it needs to be emphasised that the needs of society are the necessities of the state at the same time (rulings of 4 March 2003 and 23 November 2007); it is not permitted to create opposition between the notion “needs (necessities) of the state” and the notion “needs (necessities) of society”, because they do not deny, but supplement, each other; the notions “needs (necessities) of the state” and “needs (necessities) of society” denote the public interest and should be related to the constitutional concept of the welfare of the nation (ruling of 23 November 2007).

Interpreting Paragraph 3 of Article 23 of the Constitution, the Constitutional Court has also held in its acts on more than one occasion that, as long as an agreement is not reached on compensation for the property being taken or as long as the respective dispute is not settled in a court, property may not be taken from an owner (ruling of 4 March 2003). In interpreting the said provision of the constitutional doctrine together with other doctrinal provisions of the Constitutional Court that were formulated when interpreting Article 23 of the Constitution (*inter alia*, with the following: ownership includes obligations and this provision expresses the social function of ownership; where property is taken for the needs of society, it is necessary to seek a balance between various legitimate interests of society and its members; it is permitted

to take property (by adequately compensating for) only for such public needs that could not be objectively satisfied if a certain concrete object of property were not taken; a person whose property is taken for the needs of society has the right to demand that the established compensation be equivalent in value to the taken property; the rights and interests of an owner and the public interest may not be opposed), it needs to be noted that, under the Constitution, where the legislature regulates the relationships connected with the consideration of disputes in a court regarding taking property for the needs of society, the duty arises to establish such a legal regulation that would allow solving the said disputes promptly, thus guaranteeing the public interest and ensuring that an owner would not abuse his/her right to receive fair compensation for the taken property and would not thereby delay the procedure for taking property for the needs of society.

The Constitution does not tolerate such legal situations where, after a certain institution that is established by means of a law and has the right to adopt a decision on taking property for the needs of society adopts a decision on taking property for the needs of society and on the amount of compensation for the property taken from the owner and after such compensation is paid, it is impossible to satisfy the need of society for an unreasonably long time due to prolonged disputes, *inter alia*, disputes in courts regarding the amount of compensation for the property taken from its owner, and due to this, the interests of vital importance and other particularly important interests of society cannot be ensured. The Constitution gives rise to the duty of the legislature to establish, *inter alia*, the grounds and manner of fair compensation for property taken for the needs of society and the duty to provide that, after the competent institution decides on taking property for the needs of society and on the amount of compensation for the property taken from the owner and after this compensation is paid, a court, once it establishes that, without the immediate satisfaction of this need of society, the interests of vital importance and other particularly important interests of society will be impaired, may allow the use of the property in order to satisfy the needs of society before the respective dispute is decided on its merits regarding the amount of compensation for the taken property.

The Constitutional Court has also noted that, in deciding whether property is taken for the needs of society, account should be taken of the fact that the needs of society are not a static phenomenon. The needs that are regarded as the needs of society at a certain stage of the development of society and the state may be considered to be not in line with the constitutional concept of the needs of society at a different stage of the development of society and the state and vice versa. While taking account of the fact as to what socially important objectives are sought at the moment of taking particular property, it is necessary each time to decide on an individual basis whether the needs for which property is taken are the needs of society (ruling of 4 March 2003).

The inviolability, protection, and defence of property (*inter alia*, in cases where an owner loses his/her property as a result of a crime committed by other persons) (Article 23 of the Constitution); the protection of the rights of an honest acquirer

The Constitutional Court's ruling of 30 October 2008

The provisions of Article 23 of the Constitution, which constitute a whole, reveal the essence of the protection of the rights of ownership (ruling of 27 May 2002). The Constitutional Court has held in its acts on more than one occasion that Article 23 of the Constitution consolidates the principle of the inviolability of property. Under the Constitution, owners have the right to perform any actions, with the exception of those prohibited by law, with regard to their property, as well as to use their property and determine its future in any way that does not violate the rights and freedoms of other persons (rulings of 14 March 2006 and 20 May 2008). On the other hand, the Constitutional Court, interpreting the provisions of Article 23 of the Constitution, has held on more than one occasion that ownership includes obligations. When using his/her property, an owner must behave responsibly and carefully.

Under the Constitution, other persons must not violate the ownership rights of an owner and the state is under the obligation to defend and protect property against both unlawful encroachment on it and other violations. No one may take property in an arbitrary manner and not on the basis of law. The right of the subject of property – an owner – to demand that other persons not violate his/her right of ownership and

that the state ensure the protection of his/her ownership rights is guaranteed by the Constitution (ruling of 8 July 2005).

... the constitutional principle of the inviolability of property would also be denied if, after an owner loses his/her property as a result of a crime committed by another person (other persons), the rights of ownership of the owner would not be defended. In this context, it should be noted that, when an owner loses his/her property as a result of a crime committed by another person (other persons), this does not mean that he/she loses the rights of ownership, nor that a person who acquires such property becomes the owner of the said property. The Constitutional Court has held that Article 23 of the Constitution, *inter alia*, Paragraph 2 thereof, gives rise to the duty of the legislature to regulate ownership relationships in such a manner that would defend and protect the rights of ownership and would ensure the inviolability of property (ruling of 23 August 2005); the state is under the obligation to pass the respective laws protecting the rights of ownership and to protect ownership on the basis of such laws (ruling of 14 March 2006). Under the Constitution, an owner has the right to recover his/her property if he/she loses such property as a result of a crime committed by another person (other persons); such his/her right is an important constitutional guarantee of the protection of the rights of ownership. This implies the duty of the legislature to establish such a legal regulation that would ensure the defence of the rights of ownership of the owner who loses his/her property as a result of a crime committed by another person (other persons). When establishing the said legal regulation, the legislature must establish how the defence of the rights of ownership of an owner must be ensured, *inter alia*, in cases where such property cannot be recovered due to objective reasons and there are no possibilities of restituting it in kind.

The Constitution, while guaranteeing the protection of ownership, also establishes the constitutional right to the acquisition of property and guarantees the protection of this right (ruling of 14 March 2002). Under the Constitution, the ways of the acquisition of the right of ownership may be varied; however, they may not be in conflict with the requirements stemming from the Constitution, *inter alia*, from the principles of justice and good faith.

The legislature, paying regard to the norms and principles of the Constitution, must establish the ways and grounds for the acquisition of the right of ownership. This implies the requirement for the lawfulness of the acquisition of property. Under the Constitution, one of the essential conditions for the lawfulness of transferring an object of ownership (property) into the ownership of another person (other persons) is the expression of the will (consent) of an owner regarding such transfer of the object of ownership (property) into the ownership of another person (other persons). Where property is transferred to another person without the expression of the will (consent) of the owner, such transfer of property is considered to be unlawful and the transferred property is regarded as property acquired unlawfully by another person, unless the transfer of property into the ownership of another person (other persons) without the expression of the will (consent) of the owner of that property would be constitutionally justifiable.

Property acquired unlawfully does not become the property of the person who has acquired it. Thus, such a person does not acquire the rights of ownership, which are protected by the Constitution (ruling of 5 July 2000).

In this context, it needs to be noted that such a situation is possible where a person acquires property while knowing or having to know that the person from whom such property is acquired does not have the right to transfer that property into ownership. Such acquisition of property does not create the rights of ownership for its acquirer. In view of this, it should be noted that the Constitution also does not defend the rights of such a person who acquires property that has been lost by the owner as a result of a crime committed by another person (other persons) and he/she knows or has to know about it, i.e. he/she acquires the said property while behaving in bad faith and unlawfully.

In addition, such a situation is possible where a person who seeks to acquire property lawfully acquires property that has been lost by its owner as a result of a crime committed by another person (other persons), where such a person, when acquiring it, does not know and is unable to know that. ... even in cases where a person acquires property without knowing or without being able to know that its owner lost it as a result of a crime committed by another person (other persons), the acquisition of such property in itself may not

be treated as creating the rights of ownership for the acquirer of the property. As it has been held by the Constitutional Court on more than one occasion, no right may arise on the grounds of unlawfulness.

While regulating the protection of the rights of ownership, the legislature must ensure a balance among the values defended and protected under the Constitution. The fact that the rights of ownership of an owner who loses his/her property as a result of a crime committed by another person (other persons) must be defended does not mean that it is allowed not to protect the rights of such a person who sought to acquire property lawfully and in good faith, but who has acquired it without knowing that the owner of such property has lost it as a result of a crime committed by another person (other persons). The requirement to defend the rights of such a person stems from the Constitution, *inter alia*, the constitutional principle of a state under the rule of law and the constitutional principle of compensation for damage, which is consolidated in Article 30 of the Constitution. This constitutional principle is inseparable from the principle of justice, which is consolidated in the Constitution: laws must create all necessary preconditions for fair compensation for inflicted damage (ruling of 19 August 2006).

The requirement to defend the rights of a person who has in good faith acquired property that has been lost by its owner as a result of a crime committed by another person (other persons) stems from Article 46 of the Constitution, *inter alia*, from Paragraph 1 thereof, which also consolidates freedom of individual economic activity and initiative; freedom of individual economic activity and initiative implies the freedom to conclude contracts.

Under Paragraph 3 of Article 23 of the Constitution, property may be taken from an owner only for the needs of society where it is justly compensated for; property may be taken for the needs of society only according to the procedure established by means of a law and must be justly compensated for. The Constitutional Court has held that Paragraph 3 of Article 23 of the Constitution indicates the needs of society for which property may be taken according to the procedure established by means of a law and must be justly compensated for. These are the interests of all society or part thereof. The state, while carrying out its functions, is constitutionally obligated to ensure and satisfy such interests; where property is taken for the needs of society, it is important to seek a balance among various legitimate interests of society and its members; the needs of society for which property is taken are always specific and clearly expressed needs of society for a concrete object of property; it is permitted to take property (by fairly compensating for it) only for such public needs that could not be objectively satisfied if a certain concrete object of property were not taken; a person whose property is taken for the needs of society has the right to demand that the established compensation be equivalent in value to the taken property (rulings of 2 April 2001, 4 March 2003, and 20 May 2008).

... the imperatives that stem from Paragraph 3 of Article 23 of the Constitution are not applicable to the taking of property from its owner in cases where the owner recovers his/her property lost as a result of a crime committed by another person (other persons).

The provisions of Article 23 of the Constitution guarantee the protection of property for all its owners, i.e. natural persons, legal persons, municipalities, and the state (ruling of 27 May 2002). Therefore, under the Constitution, laws have to protect the rights of ownership of all owners, *inter alia*, the ownership rights of the state (as the organisation of all society).

The protection of the rights of an owner of a trademark (Article 23 of the Constitution)

The Constitutional Court's ruling of 27 March 2009

The requirements, which arise from Article 23 of the Constitution, to guarantee the inviolability of property and the protection thereof must be applied to the full extent also to defending intellectual property rights and ensuring the inviolability and protection of the property of an owner of a trademark.

The specificity of the protection of ownership rights is also determined by an object of property. While taking account of the specificity of the objects of property, the legislature may consolidate various ways of the defence of the infringed rights of the owners of these objects, *inter alia*, where such ways are connected with reimbursement (compensation) for inflicted damage or other losses.

... an owner of a trademark may sustain various losses – both of material and moral nature (for instance, decrease in the value of the trademark, decrease in the reputation of the enterprise of the owner of the trademark, etc.), which occur as a result of unlawful actions performed by other persons. The Constitution, *inter alia*, Paragraphs 1 and 2 of Article 23 thereof, and the constitutional principle of a state under the rule of law give rise to the duty of the legislature to establish such a legal regulation that would permit reimbursing (compensating) for the losses of both material and moral nature sustained by an owner. Such a legal regulation must create the preconditions, by taking account of the specificity of intellectual property, for calculating the losses sustained by an owner of a trademark as a result of unlawful actions performed by other persons; in cases where sometimes it is even impossible to calculate the amount of material damage inflicted on an owner of a trademark, it is also necessary to establish such a manner of compensation for losses sustained by the said owner where the said manner of compensation would not be related only to the material damage inflicted on him/her.

It should be noted that, under the Constitution, laws must provide for responsibility for an infringement of the rights of an owner of a trademark, *inter alia*, the duty to reimburse an owner of a trademark for inflicted material and moral damage (losses).

The protection of the rights of the owners of copyright and related rights (Article 23 of the Constitution)

The Constitutional Court's ruling of 6 January 2011

The requirements, which arise from Article 23 of the Constitution, to guarantee the inviolability of property and the protection thereof must be applied to the full extent also to defending intellectual property rights and ensuring the inviolability and protection of the property of the owners of copyright and related rights.

The specificity of the protection of ownership rights is also determined by an object of property. While taking account of the specificity of the objects of property, the legislature may consolidate various ways of the defence of the infringed rights of the owners of these objects, *inter alia*, where such ways are connected with reimbursement (compensation) for inflicted damage or other losses.

The necessity to compensate a person for material and moral damage inflicted on him/her is a constitutional principle stemming from the Constitution, *inter alia*, from Paragraph 2 of Article 30 thereof, which provides that compensation for material and moral damage inflicted on a person is established by law.

It should be noted that, under the Constitution, laws must provide for responsibility for an infringement of the rights of the owners of copyright and related rights, *inter alia*, the duty to compensate an owner of copyright and related rights for inflicted material and moral damage (losses).

[...]

... the owners of copyright and related rights may sustain various losses – both of material and moral nature (as, for instance, a decrease in the value of a work or an object of related rights, a decrease in the reputation of the owners of copyright and related rights, etc.), which occur as a result of unlawful actions performed by other persons. The Constitution, *inter alia*, Paragraphs 1 and 2 of Article 23 thereof, and the constitutional principle of a state under the rule of law give rise to the duty of the legislature to establish such a legal regulation that would permit reimbursing (compensating) for the losses of both material and moral nature sustained by an owner, including an owner of copyright and related rights. Such a legal regulation must create the preconditions, by taking account of the specificity of intellectual property, for calculating the losses sustained by an owner of copyright and related rights as a result of unlawful actions performed by other persons; in cases where sometimes it is even impossible to calculate the amount of material damage inflicted on an owner of copyright and related rights, it is also necessary to establish such a manner of compensation for losses sustained by the said owner where the said manner of compensation would not be related only to the material damage inflicted on him/her.

The inviolability and protection of ownership; ownership includes obligations; limiting the right of ownership; the protection of the ownership rights of the owners of residential and non-residential premises in blocks of flats (Article 23 of the Constitution)

The Constitutional Court's ruling of 7 June 2016

Interpreting the provisions of Article 23 of the Constitution, the Constitutional Court has held that the right of ownership is one of fundamental human rights. The inviolability and protection of ownership, as consolidated in Article 23 of the Constitution, *inter alia*, means that owners have the right to perform any actions, with the exception of those prohibited by law, with regard to their property, as well as to use their property and determine its future in any way that does not violate the rights and freedoms of other persons (*inter alia*, the rulings of 14 March 2006 and 20 December 2013). Laws must protect the rights of ownership of all owners (*inter alia*, the rulings of 30 September 2003 and 9 October 2013). An owner has the right to demand that other persons not violate his/her rights of ownership and the state has the duty to defend and protect ownership against unlawful encroachment on it (*inter alia*, the rulings of 19 September 2002 and 6 January 2011). Article 23 of the Constitution gives rise to the duty of the legislature to regulate ownership relationships in such a manner that would defend and protect the rights of ownership and would ensure the inviolability of property (rulings of 30 October 2008 and 30 October 2008).

The Constitutional Court has emphasised on more than one occasion that ownership includes obligations (*inter alia*, the rulings of 21 December 2000 and 3 April 2015). As a rule, the subjects of the ownership relationships that are regulated by means of legal norms not only have certain rights, but also the respective duties (rulings of 8 April 1997 and 31 January 2011). When using his/her property, an owner must behave responsibly and carefully (ruling of 30 October 2008). An owner, while enjoying the right to possess, use, and dispose of his/her property, may not violate laws and the rights of other persons (*inter alia*, the rulings of 14 March 2002 and 12 April 2013). The duties of an owner are determined, *inter alia*, by the specificity of the objects of ownership; thus, taking account of the particularities of the objects of ownership, the legislature may establish certain duties of the owners of these objects, as well as their responsibility for non-compliance with these duties (ruling of 12 April 2013).

Under the Constitution, the right of ownership is not absolute; it can be limited by means of a law, *inter alia*, due to the nature of an object of ownership and due to a constitutionally justifiable need that is essential to society. In all cases where [the right of ownership is] limited, the following conditions must always be observed: ownership may be limited only on the grounds of a law; the limitations must be necessary in a democratic society in order to protect the rights and freedoms of other persons, the values consolidated in the Constitution, and the constitutionally important objectives that are essential to society; regard must be paid to the principle of proportionality, under which the measures provided for in laws must be in line with the sought objectives that are essential to society and are constitutionally justifiable (*inter alia*, the rulings of 19 September 2002 and 20 December 2013). It needs to be emphasised that, under the Constitution, it is not allowed to deny the essence of the right of ownership by means of any limitation on the right of ownership; if the right of ownership were limited to the extent that its implementation becomes impossible, if the said right were restricted to the extent that reasonable limits would be exceeded, or its legal protection would not be ensured, in such a case, there would be grounds for asserting that the essence of the right of ownership is violated, which would be tantamount to denying the said right (ruling of 13 May 2005).

The Constitutional Court has also held that the ownership right of the owners of residential and non-residential premises are protected under the Constitution and laws; the Constitution and laws protect and defend the rights of owners irrespective of whether there is [a certain society] in a block of flats or whether there is no such society (ruling of 23 June 1999). The proper maintenance of blocks of flats and their preservation is not only the private interest of their owners, but also a public interest (ruling of 21 December 2000). It has been noted in the [jurisprudence] of the Constitutional Court that, under the Constitution, the existence of a public interest (constitutionally important objective) may serve as a ground

for limiting the right of a person to ownership only in cases where the non-limitation of this right, due to the nature of property and/or other important reasons, would render the protection of the values consolidated in the Constitution impossible and would harm the public interest (*inter alia*, the rulings of 14 March 2002 and 5 July 2013).

The discretion of the legislature to regulate the relationships in connection with the bankruptcy of a natural person

The Constitutional Court's ruling of 19 May 2017

... under the Constitution, the legislature generally has no duty to establish the institution of the bankruptcy of a natural person as one of the possible ways of solving the insolvency of natural persons. Having chosen to establish the institution of the bankruptcy of a natural person in the Lithuanian legal system, the legislature, in order to ensure, among other things, a balance of interests between an insolvent natural person and his/her creditors, has broad discretion to regulate the relationships in connection with the bankruptcy of natural persons, *inter alia*, to choose a model of the institution of the bankruptcy of a natural person, to define the circle of persons that could go bankrupt, to establish the grounds for opening bankruptcy proceedings against a natural person, also the cases where such proceedings may not be opened, to regulate the procedures for the bankruptcy of natural persons, to determine the conditions for release from fulfilling debt obligations, as well as other essential elements of the institution of the bankruptcy of a natural person. However, in doing so, the legislature must respect the norms and principles of the Constitution.

... the models of the institution of the bankruptcy of a natural person are diverse; the choice by the legislature to consolidate one or another model of the institution of the bankruptcy of a natural person by means of laws may depend on the specific objectives pursued by the legislature. In addition, laws may establish the judicial or extrajudicial bankruptcy process of natural persons. The legislature, making use of its broad discretion to choose one or another model of the institution of the bankruptcy of a natural person, may also establish such a model whereby, in the bankruptcy process of a natural person, a court would be granted wider powers to decide, *inter alia*, on opening bankruptcy proceedings against a natural person and/or exempting him/her from the fulfilment of remaining unsatisfied debt obligations after the closure of the bankruptcy process, once the court has taken into account the circumstances of a particular case and has assessed the situation of a natural person seeking bankruptcy.

... according to Article 29 of the Constitution and the constitutional principle of a state under the rule of law, when regulating the relationships in connection with the bankruptcy of a natural person, the legislature must equally treat all persons who are in the same (similar) situation and establish such grounds and procedure for opening personal bankruptcy proceedings that are equally applicable to all natural persons.

[...]

... in order to ensure a balance between the interests of an insolvent natural person and his/her creditors by means of the bankruptcy institution of a natural person established in the law, the legislature may not deny the requirement, which arises from the Constitution (*inter alia*, from the principle of compensation for damage, as laid down in Paragraph 2 of Article 30 thereof, as well as from the constitutional principles of justice and a state under the rule of law), that material and moral damage sustained by a person must be compensated for in a fair manner. Consequently, when determining the conditions for releasing bankrupt natural persons from fulfilling debt obligations, the legislature may not establish any such a legal regulation according to which persons would be able to avoid the obligation to compensate for the material and/or moral damage caused by them by committing a criminal act and a person who has sustained the said damage would not be able to receive fair compensation for it.

... in view of the fact that, as mentioned before, the personal bankruptcy process is aimed to attain a fair balance between the interests of the debtor and his/her creditors, it would be unfair to establish such a legal regulation under which the interests, *inter alia*, the desire to return to an active economic activity, of a person who has caused damage by committing a criminal act would have greater protection than the rights

of a person who has sustained the said damage, i.e. his/her right to receive fair compensation for the sustained damage, which, at least in part, would restore the situation that had existed before the criminal act was committed. Thus, not only the insolvency of a person who has committed an intentional criminal act, but also the insolvency of a person who has committed a negligent criminal act, is not a constitutionally justifiable ground for releasing such a person from the obligation to compensate for the damage that he/she has caused.

Limitations on the rights of ownership in cases where such limitations are necessary for the installation and operation of the energy infrastructure; the amount of compensation for losses resulting from limitations on the right of ownership

The Constitutional Court's ruling of 8 July 2020

... in accordance with Paragraph 3 of Article 46 of the Constitution, regulating economic activity in the field of energy so that it serves the general welfare of the people and seeking to achieve the constitutionally important objective of ensuring the security and reliability of the energy system, the state may, by means of a law, impose limitations on the right of ownership, which is consolidated under Article 23 of the Constitution, in cases where such limitations are necessary for the installation and operation of the energy infrastructure in order to provide a service in the public interest: the secure and reliable supply of electricity to all consumers. ... under the Constitution, *inter alia*, the constitutional imperative of social harmony and the constitutional principles of justice, reasonableness, and proportionality, when establishing such a legal regulation, the legislature must ensure a balance between the constitutionally defended and protected rights and interests of the owners of land and other immovable objects, on the one hand, and the rights and interests of electricity consumers, on the other. Therefore, having regard to the imperative of ensuring the effective protection of consumer rights, which stems from the Constitution, *inter alia*, Paragraph 5 of Article 46 thereof, and implies imposing limits on electricity prices as one of the means of protecting the interests of electricity consumers, the legislature may provide for the maximum amount of compensation for losses resulting from limitations on the right of ownership in cases where such limitations are necessary for the installation and operation of the energy infrastructure.

The right to ownership is a constitutional right of persons; the legislature, when imposing limitations on this right, is bound by the norms and principles of the Constitution (ruling of 14 March 2002), *inter alia*, the constitutional principle of the equality of persons, enshrined in Article 29 of the Constitution.

2.2.5.2. Restitution

The property expropriated by the occupation government did not become state-owned property

The Constitutional Court's ruling of 23 August 2005

After the occupation government nationalised and in other unlawful ways expropriated residential houses, parts thereof, flats, land, forests, water bodies, and other private property in 1940 and later, the innate human right to possess private property was denied.

On the basis of such arbitrary acts of the occupation government, any lawful state-owned public property could not arise, nor did it arise, since law cannot come into existence on the basis of lawlessness. In its rulings, the Constitutional Court has held on more than one occasion that the property seized from the people in such a manner should be regarded only as property factually possessed by the state.

Balancing the interests of persons whose rights of ownership are to be restored and the interests of all society in the course of restitution

The Constitutional Court's ruling of 23 August 2005

The fact that the state has decided that the denied rights of ownership must be restored, as well as the fact that the law regulating restitution relationships has been adopted and that the restoration of the rights of ownership has started to be implemented, means that the state has undertaken the obligation to restore the rights of ownership in the manner, under the conditions and procedure, and within the time limits as

provided for in the law. At the same time, the duty has arisen for the state (its institutions) to allocate the necessary funds and other financial and material resources for the restoration of the rights of ownership (*inter alia*, for the payment of monetary compensation for real property to be purchased by the state). It needs to be noted that the legislature, when it establishes, by means of a law, the manner, conditions, and procedure of the restoration of the rights of ownership to the existing real property, as well as when it consolidates such a manner of the restoration of the rights of ownership to the existing real property as monetary compensation payment, is bound by the norms and principles of the Constitution: *inter alia*, by Paragraph 2 of Article 128 of the Constitution, according to which the procedure for the possession, use, and disposal of state-owned property is established by law; by Article 23 of the Constitution, which consolidates the protection of the rights of ownership; by Article 29 of the Constitution, which guarantees the equality of the rights of persons; and by the constitutional principle of a state under the rule of law, which encompasses legal clarity, legal certainty, legal security, the protection of legitimate expectations, and other requirements; the legislature is also bound by other norms and principles of the Constitution. While regulating the restoration of the rights of ownership to the existing real property, the legislature must take account of the constitutional principles of the protection of property, as well as of the fact that, in the course of restoring the rights of ownership to the existing real property, it is equally necessary to protect other values consolidated in the Constitution, *inter alia*, the striving for an open, just, and harmonious civil society, and to ensure that, in the course of restoring the rights of ownership of certain persons, i.e. owners, the rights and legitimate interests of other persons would not be violated. During the process of the restoration of the rights of ownership to the existing real property, a balance should be sought between the interests of persons whose rights of ownership are to be restored and the interests of all society.

The legislature has the discretion to establish, by means of a law, the manner, conditions, and procedure of the restoration of the rights of ownership to the existing real property. In order to fulfil the obligations undertaken by the state to restore the rights of ownership to the existing real property under the manner, conditions, and procedure established in a law, *inter alia*, in order to pay monetary compensation for the real property purchased by the state, the funds of the state budget and other state resources are used. The burden of the obligations undertaken by the state falls on all society, whose members are also those persons to whom the rights of ownership are restored. Consequently, by establishing the manner, conditions, and procedure of the restoration of the rights of ownership to the existing real property, the state may not undertake the financial and other obligations in the amount that would be unbearable for society and the state, would impose a disproportionately heavy financial or another burden on society, could cause social tension and conflict, would preclude or hinder the state from ensuring other constitutional values, or would preclude or hinder the state from fulfilling the functions that fall on it under the Constitution. The obligations undertaken by the state to restore the rights of ownership to the existing real property must be linked with the financial and material capacities of the state; the time limits of the restoration of the rights of ownership to the existing real property must be realistic – they must be such that the state could properly fulfil the undertaken obligations by the established time.

The duty of the state to pay regard to the principle of the protection of legitimate expectations in the course of regulating restitution relationships

The Constitutional Court's ruling of 23 August 2005

Under the Constitution, the state must comply with obligations undertaken by it and fulfil them properly and in time. The laws on the restoration of the rights of ownership to the existing real property must be supported by financial, material, and other resources of the state. Otherwise, it would be impossible to make use of the laws providing for the restoration of the rights of ownership, they would become inefficient, and the trust of a person in the state and law would be undermined.

[...]

... the fact that the state has decided that the denied rights of ownership must be restored, as well as the fact that the law regulating restitution relationships has been adopted and the restoration of the rights of ownership has started to be implemented, means that the state has created the legitimate expectation for

the persons entitled to have their rights of ownership restored that they will be able to implement this right in the manner, under the conditions and procedure, and within the time limits provided for in the law. The said legitimate expectation is protected and defended by the Constitution. At the same time, the state acquires the duty to regulate, by means of laws, the restoration of the rights of ownership to the existing real property in such a manner that the aforementioned legitimate expectation would be implemented in reality.

The powers of the legislature to extend the time limits by when the payment of monetary compensation must be completed and to change the periodicity of compensation payment into the one less favourable to the persons entitled to receive such compensation

The Constitutional Court's ruling of 23 August 2005

... during the process of the restoration of the rights of ownership to the existing real property, a balance should be sought between the interests of persons whose rights of ownership are to be restored and the interests of all society. ... in general, the Constitution does not preclude the legislature, where necessary, from extending the time limits until the expiry of which the payment of particular monetary compensation must be completed, as well as from changing the previously established periodicity of the payment of such monetary compensation, *inter alia*, from establishing a certain legal regulation that would be less favourable to the persons entitled to receive such monetary compensation. However, the legislature is permitted to establish the aforesaid legal regulation, which would be less favourable to the persons entitled to receive particular monetary compensation, only in exceptional cases, where doing so is constitutionally justifiable. ... *inter alia*, such a case that would be constitutionally justifiable could occur where, due to special circumstances, a particularly difficult economic and financial situation in the state would emerge, in which, if the legislature did not extend the previous time limits, established in the law, until the expiry of which the payment of particular monetary compensation must be completed and/or if the legislature did not change the previously established periodicity of the payment of monetary compensation into the one less favourable to the persons entitled to receive that monetary compensation, the values protected under the Constitution would be damaged to an extent that is greater than the one that could occur if the said time limits, until the expiry of which the payment of monetary compensation must be completed, [were extended] and/or the previously established periodicity of the payment of monetary compensation [were changed] into the one less favourable to the persons entitled to receive that monetary compensation.

It should especially be emphasised that, when, due to certain objective reasons, extending the previously established time limits until the expiry of which the payment of monetary compensation must be completed and/or changing the previously established periodicity of the payment of monetary compensation, the legislature must pay regard to the constitutional requirements of legal clarity, legal certainty, legal security, and the protection of legitimate expectations, which imply the duty of the legislature also to establish, by means of a law, such a legal regulation that would cover the aforesaid situations and would make it clear by when the payment of monetary compensation is to be completed, as well as in what portions and when such compensation is to be paid to persons entitled to receive it.

The constitutional requirements of legal clarity, legal certainty, and the protection of legitimate expectations also imply that the time limits until the expiry of which the payment of monetary compensation must be completed may not be unreasonably long, nor may they be extended for an unreasonably long time period, since the unreasonably long time limits of the restoration of the rights of ownership to the existing real property, especially in the event of their unreasonable extension (*inter alia*, repeated extension), can distort the institution of the restoration of the rights of ownership to the existing real property, violate the constitutional rights of ownership, as well as other rights of a person, and undermine the trust of people in the state and law.

As long as property is not restituted or compensation is not paid, the rights of former owners to concrete property are not restored

The Constitutional Court's ruling of 23 August 2005

In its rulings adopted in the constitutional justice cases in which the constitutionality of the legal acts (parts thereof) regulating the restoration of the ownership rights of citizens to the existing real property was assessed, the Constitutional Court noted on more than one occasion that, as long as property has not been restituted or, in cases where property is not restituted in kind – as long as the respective compensation has not been paid, the subjective rights of a former owner to concrete property are not restored. A decision of the institution authorised by the state to restitute property in kind or to compensate for it has the juridical meaning to the effect that, only from the moment of the adoption of such a decision, a former owner acquires the rights of the owner to the property concerned. Where the rights of ownership are restored on the grounds of a law, the norms of Article 23 of the Constitution apply to the defence of these rights to the full extent; after the decision to restore the rights of ownership to a person is adopted by the institution authorised by the state, the person acquires the rights of ownership, which are protected and defended by Article 23 of the Constitution.

The recognition of the continuity of the rights of ownership constitutes the grounds for limited restitution

The Constitutional Court's ruling of 5 July 2007

... when, on 15 November 1990, the Supreme Council adopted the principled decision that it is necessary to restore the rights of ownership, it was held that the continuity of the rights of ownership of the citizens of Lithuania is unquestionably recognised, that the citizens of Lithuania have the right to recover in kind, within the limits and under procedure defined by means of a law, the property that belonged to them, while, in cases where there are no possibilities of recovering it, to receive compensation for it. The provision that, in cases where there are no possibilities for restituting property in kind, compensation must be granted is not in conflict with the principles of the inviolability of property and the protection of the rights of ownership, since fair compensation also ensures the restoration of the rights of ownership; however, it is important that the conditions that prevent the restitution of property in kind and are established by means of the law regulating restitution relationships be in line with the constitutional provisions governing the protection of ownership.

It was impossible to restore the denied rights of ownership by invoking the laws that were valid at the time when the said principled decision to restore the rights of ownership was adopted. In regulating, by means of laws, the restoration of the denied rights of ownership, it was necessary to take account of the fact that, during the years of the occupation, other property relationships, as well as other social and economic relationships, emerged among people and other objective circumstances appeared, due to which it was impossible to completely restore the rights of ownership (to return to the *status quo ante*). Therefore ... not *restitutio in integrum*, but limited restitution, was chosen; such a choice was determined, among other factors, by the scale of the restoration of the rights of ownership and the limited material and financial capacities of the state.

The constitutional grounds for regulating restitution relationships; limited restitution

The Constitutional Court's ruling of 5 July 2007

When regulating the relationships of the restoration of the rights of ownership, the legislature has the discretion to establish the conditions and procedure for the restoration of the rights of ownership. In doing so, the legislature is bound by the Constitution; thus, the legislature must pay regard to the constitutional principles of the protection of the rights of ownership, the constitutional striving for an open, just, and harmonious civil society, as well as other constitutional values. In its ruling of 4 March 2003, the Constitutional Court held that, when the conditions and procedure for the restoration of the rights of ownership are established by means of laws, it is necessary to take account of the changed social, economic,

and other conditions. In its ruling of 27 October 1998, the Constitutional Court held that, in the process of the restoration of the rights of ownership, it is necessary to balance the interests of persons who seek to restore the rights of ownership and the needs of society; in the same ruling, it was also stated that, in the course of the restoration of the rights of some persons, it is not permitted to violate the rights of other persons and that it is impossible to attain justice by recognising the interests of only one group or one person and by denying the interests of others at the same time.

The Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property may provide that objects of property are not restituted in kind to the persons entitled to have their rights of ownership to those objects restored and that those objects are purchased by the state; the provision [of the law] that compensation must be provided for in cases where property may not be restituted in kind is not in conflict with the principles of the inviolability of property and the protection of the rights of ownership, since fair compensation ensures the restoration of the rights of ownership in an equal manner (rulings of 27 May 1994 and 23 August 2005).

... the legislature, while having the powers to establish the conditions and procedure for the restoration of the rights of ownership, also has the powers to stipulate (of course, without overstepping the limitations established explicitly and implicitly in the Constitution) that, in cases where it is impossible to restate in kind specifically the property that belonged to a certain person by right of ownership prior to the unlawful nationalisation or other unlawful expropriation, the rights of ownership are restored by other ways, *inter alia*, by granting a plot of land, forest, or water body of equal value in another location, i.e. by granting property that never belonged to that person by right of ownership.

Interpreting Article 23 of the Constitution in the context of the restoration of the rights of ownership, the Constitutional Court has held that it is impossible to equate the purchase by the state of the existing real property from citizens whose rights of ownership are to be restored with the taking of property from an owner for the needs of society and that, in deciding whether compensation for the existing real property not to be restituted in kind is fair, regard should be paid to the fact that it was not the State of Lithuania that unlawfully nationalised or otherwise unlawfully expropriated the property of owners. The State of Lithuania, seeking, at least in part, to restore justice – to restore the violated rights of ownership, has opted for limited restitution rather than *restitutio in integrum*; the restoration of justice where owners are compensated for the existing real property not to be restituted in kind has two sides: it is the restoration of justice with respect to both owners and all society; the unlawful actions of the occupation government inflicted enormous damage not only on the owners whose rights of ownership were denied, but also on all society and the entire state; in restoring justice with respect to owners, the state may not ignore justice with respect to all society, whose members also include the said owners; in the process of the restoration of the rights of ownership, the state must strive for a balance between the persons whose rights of ownership are to be restored and the interests of all society (ruling of 4 March 2003).

The Constitution does not prohibit such a situation where the relationships of the restoration of the rights of ownership to the existing real property are regulated by means of a law in a differentiated manner, *inter alia*, in terms that the conditions and procedure for the restoration of the rights of ownership may vary depending on the kind of the property (land, forest, a water body) to which the rights of ownership are to be restored, or depending on the territory on which the property to which the rights of ownership are to be restored is located. However, regard must be paid to the constitutional principle of a state under the rule of law, which includes, *inter alia*, the protection of legitimate expectations, legal certainty, and legal security.

At the same time, it needs to be emphasised that, although the constitutional principle of a state under the rule of law implies the requirements of legal certainty, legal security, the protection of legitimate expectations, and other requirements, *inter alia*, those raised for the legal regulation of restitution relationships, it is not permitted to interpret the said principle in such a way that it does not, in general, permit the legislature, after it has started the restoration of the rights of ownership under certain conditions, to change those conditions later, *inter alia*, to establish new, additional conditions, in cases where such changes are aimed at protecting certain constitutional values that would be harmed or the preconditions for such harm would be created if the conditions for the restoration of the rights of ownership to the existing

real property established earlier were not changed. Quite to the contrary, should it become clear that the restoration of the rights of ownership to the existing real property under the earlier established conditions and procedure inflicts harm on other values protected and defended by the Constitution or gives rise to the preconditions for such harm to appear, the legislature not only may, but also must, respectively amend the previously established conditions and procedure for the restoration of the rights of ownership to the existing real property. However, in such cases, the legislature must also pay regard to the constitutional principle of proportionality, under which the measures established by legal acts and put into application must be proportionate to the objective sought, while the rights of a person may not be limited more than necessary in order to reach a legitimate, universally significant, and constitutionally justifiable objective.

Restitution in areas of particular value

The Constitutional Court's ruling of 5 July 2007

... the circumstance that the property to which the rights of ownership are restored is in an area that is categorised as an area of particular value is a sufficient basis for the legislature to regulate the restoration of the rights of ownership to such property, by taking account of, *inter alia*, the legal status of such an area. It needs to be emphasised that the legislature, when establishing the conditions and procedure for the restoration of the rights of ownership to land, forests, and water bodies that are located in areas of particular value may not disregard the imperative, arising from the Constitution, to regulate those relationships in the manner ensuring that the protection of areas of particular value is not undermined, since ... areas of particular value are a national value of universal significance and it is necessary to preserve them for posterity; the protection of such areas is a public interest, to guarantee which is a constitutional obligation of the state.

[...]

If the objects of nature that are located in areas of particular value belong by right of ownership to the state, then, regardless of whether or not they are recognised as objects of state importance, they may be transferred into the ownership of other persons only in the cases (and only in the manner) where this is constitutionally justifiable; *inter alia*, a legal regulation whereby land, forests, parks, and water bodies that are located in areas of particular value and belong by right of ownership to the state would be transferred, as equivalent kind, into the ownership of other persons when the rights of ownership are restored to them, i.e. a legal regulation whereby an object – land, a forest, a park, or a water body – that is located in an area of particular value would be transferred to a person in kind into his/her ownership where such a person never had the ownership rights to the said object, would lack constitutional justification (ruling of 14 March 2006).

... the legislature has the powers to establish also such a manner of the restoration of the rights of ownership of citizens that, in cases where it is impossible to restitute in kind the plot of land, forest, or water body that belonged to a person by right of ownership prior to the unlawful nationalisation or other unlawful expropriation, the rights of ownership are restored by giving the person a plot of land, forest, or water body that is in another locality, but which is of equal value to the former one; however, under the Constitution, the legislature may not establish any such a manner of the restoration of the rights of ownership to the existing real property where, instead of the previously possessed plot of land, forest, or water body in another location, a person is assigned land, forest, or a water body as property of equal value that is located in the areas categorised as areas of particular value. Such a legal regulation would create the legal preconditions for the occurrence of qualitative changes in areas of particular value, the control over which would be difficult, and it would not be in line with Article 54 and Paragraph 2 of Article 128 of the Constitution and the constitutional principle of a state under the rule of law.

[...]

... the legislature can also establish a legal regulation whereby, in the territory of areas of particular value (in state parks and state reserves), a person is restituted in kind precisely the land, forest, or water

body that belonged to him/her by right of ownership prior to the unlawful nationalisation or other unlawful expropriation, in cases where the said land, forest, or water body are not purchased by the state.

The legitimate expectation of citizens that their rights of ownership to the existing real property will be restored

The Constitutional Court's decision of 4 July 2008

The Constitutional Court has held in its acts on more than one occasion that the fact that the state has decided that the denied rights of ownership must be restored, as well as the fact that the law regulating restitution relationships has been adopted and the restoration of the rights of ownership has started to be implemented, means that the state has created the legitimate expectation for the persons entitled to have their rights of ownership restored that they will be able to implement this right in the manner, under the conditions and procedure, and within the time limits provided for in the law; the said legitimate expectation is protected and defended by the Constitution; at the same time, the state acquires the duty to regulate, by means of laws, the restoration of the rights of ownership to the existing real property in such a manner that the aforementioned legitimate expectation would be implemented in reality.

[...]

In the acts of the Constitutional Court, it has also been held on more than one occasion that the legislature, having established the procedure and conditions for the restoration of the rights of ownership, emphasised that priority is given to the restitution of land in kind to the former owners; however, if, due to the existing factual relationships of land use and the needs of society, there are no possibilities of restoring the land in kind, they are guaranteed the right to choose the manner of the restoration of the rights of ownership under the procedure and conditions established in the law, *inter alia*, the restoration of the rights of ownership in equivalent kind.

However, after the legislature has chosen not *restitutio in integrum*, but limited restitution, citizens who meet the requirements established in [the law] for the restoration of the rights of ownership are granted the right to restitution, though not necessarily in the requested manner (provided there is no possibility of restoring the rights of ownership in that particular manner), but in the manner provided for in the law, where the choice of the manner is determined not by the wishes of claimants to property restitution, but by objective circumstances (obstacles to reconstitute the property in kind or to compensate with property of equal value, where such obstacles emerged due to the factual relationships of land use and the needs of society).

Therefore, the statement of the will of a citizen who meets the requirements established in [the law] for the restoration of the rights of ownership does not mean that the rights of ownership will be restored to him/her in the manner that he/she requests. At the same time, it needs to be noted that, after a claimant to property restitution has properly stated his/her will, he/she may reasonably expect that the rights of ownership will be restored to him/her in the manner provided for in the law, by following the procedure established in [the law], and that, in the course of the restoration of the rights of ownership, the procedure provided for in [the law] will not be violated (authorised institutions will not delay the performance of the actions that are within their competence).

The needs of society due to which the existing real property is not restituted in kind to former owners

The Constitutional Court's ruling of 2 September 2011

... as held by the Constitutional Court, the legitimate expectation of an owner to have his/her rights of ownership restored to the existing real property does not mean that the rights of ownership to the existing real property must, in all cases, be restored by restituting that property in kind; there may also be such legal situations where former owners are not restituted in kind such existing real property that is necessary for the needs of society (ruling of 20 May 2008).

The Constitutional Court has held on more than one occasion that the needs of society due to which the existing real property is not to be restituted in kind to former owners may be very much varied. The

Constitutional Court has held that the concept of the needs of society due to which certain property is not to be restituted in kind in the course of restitution, but is to be purchased by the state, is much broader than the content of the notion “the needs of society”, as used in Paragraph 3 of Article 23 of the Constitution (ruling of 5 July 2007).

In this context, it should be noted that, as held by the Constitutional Court, the needs of society for which property may be taken according to the procedure established by means of a law and must be justly compensated for are the interests of all society or part thereof. The state, while carrying out its functions, is constitutionally obligated to ensure and satisfy such interests; where property is taken for the needs of society, it is important to seek a balance among various legitimate interests of all society and its members; the needs of society for which property is taken are always specific and clearly expressed needs of society for a concrete object of property (rulings of 2 April 2001 and 4 March 2003).

... it also needs to be noted that, according to the law, it is allowed not to reconstitute to former owners in kind only such existing real property that is used for the needs of all society or part thereof (but not for the needs of individual persons), *inter alia*, the property used for educational, healthcare, cultural, and scientific needs.

The constitutional grounds for regulating restitution relationships

The Constitutional Court's ruling of 19 June 2012

... in the acts of the Constitutional Court (*inter alia*, the rulings of 4 March 2003, 23 August 2005, 5 July 2007, 20 May 2008, 9 March 2010, and 22 December 2010), the broad official constitutional doctrine of the restoration of the rights of citizens to the existing real property was formed, which is based, *inter alia*, on the following provisions:

- the State of Lithuania, seeking, at least in part, to restore justice – to restore the violated rights of ownership, has opted for limited restitution rather than *restitutio in integrum*; such a choice was determined by the scale of the restoration of the rights of ownership and the limited material and financial capacities of the state; in regulating, by means of laws, the restoration of the denied rights of ownership, it was necessary to take account of the fact that, during the years of the occupation, other property relationships, as well as other social and economic relationships, emerged among people and other objective circumstances appeared, due to which it was impossible to completely restore the rights of ownership (to return to the *status quo ante*);

- in regulating the restoration of the denied rights of ownership, the legislature has the discretion to establish the conditions and procedure for the restoration of the rights of ownership;

- the legislature, in regulating the restoration of the rights of ownership, has the discretion to establish, *inter alia*, the time limits for filing applications for the restoration of the rights of ownership; in doing so, the legislature must take account of the fact that the unreasonably long time limits of the restoration of the rights of ownership to the existing real property, especially in the event of their unreasonable extension (*inter alia*, repeated extension), may distort the institution of the restoration of the rights of ownership to the existing real property (ruling of 22 December 2010);

- the fact that the state has decided that the denied rights of ownership must be restored, also the fact that the law regulating restitution relationships has been adopted and that the implementation of the restoration of ownership rights has started, has created the legitimate expectation for persons that have the right to restore the rights of ownership to implement such their right in the manner, under the conditions and procedure, and within the time limits as established in the law; the said legitimate expectation is protected and defended by the Constitution; at the same time, the state acquires the duty to regulate, by means of laws, the restoration of the rights of ownership to the existing real property in such a manner that the aforementioned legitimate expectation would be implemented in reality;

- the constitutional imperatives of a harmonious, just, and open civil society, as well as the constitutional requirements of legal certainty, legal security, and the protection of legitimate expectations, imply that the launched process of restitution may not be extended for an unreasonably long time; thus, amendments to the legal regulation governing the respective relationships may not be such that would

create the preconditions for delaying this process for an unreasonably long period; due to an unreasonably long time during which the rights of ownership to the existing real property are restored, the essence of the institution of restitution itself can be distorted or even denied, as well as the constitutional rights of ownership and other rights of a person can be violated, and the trust of people in the state and law can be undermined (rulings of 5 July 2007 and 22 December 2010).

Fair compensation for real property purchased by the state (Article 23 of the Constitution)

The Constitutional Court's ruling of 11 September 2013

Article 23 of the Constitution prescribes:

“Property shall be inviolable.

The rights of ownership shall be protected by law.

Property may be taken only for the needs of society according to the procedure established by law and shall be justly compensated for.”

The right of ownership as an innate right of a human being, in the sense of Article 23 of the Constitution, may not be equated to the right of a citizen of the Republic of Lithuania to restore the rights of ownership to the existing real property according to the procedure established by means of a law (ruling of 22 December 2010).

Interpreting the content of Article 23 of the Constitution in the context of the restoration of the rights of ownership, the Constitutional Court has held that the constitutional guarantee of the inviolability of property, as well as the constitutional regulation of the taking of private property for the needs of society, denies any possibility of general nationalisation without compensation; such a concept of the function of Article 23 of the Constitution implies that, in restoring the rights of ownership to citizens whose rights of ownership were generally and unlawfully denied by the occupation government, the state must also follow the principle of fair compensation for property to be purchased by the state (ruling of 18 June 1998).

The Constitutional Court, interpreting Article 23 of the Constitution, has also held on more than one occasion that the legislature, in regulating the restoration of the denied rights of ownership, has discretion to establish the conditions and procedure for the restoration of the rights of ownership and that this discretion is objectively determined by the fact that, during the period following the unlawful expropriation of property, the system of the relationships of ownership changed in substance (rulings of 2 April 2001 and 4 March 2003). Nonetheless, when establishing, by means of laws, the conditions and procedure for the restoration of the rights of ownership to the existing real property, the legislature is bound by the Constitution; thus, the legislature is also obliged to take account of the constitutional principles of the protection of the rights of ownership, the constitutional striving for an open, just, and harmonious civil society, as well as of other constitutional values (ruling of 4 March 2003).

The Constitutional Court has held on more than one occasion that the provision according to which compensation must be granted where the restitution of property in kind is impossible is not in conflict with the principles of the inviolability of property and the protection of the rights of ownership, since fair compensation ensures the restoration of the rights of ownership (*inter alia*, the rulings of 23 August 2005, 5 July 2007, 6 September 2007, 9 March 2010, and 30 May 2013).

Interpreting Article 23 of the Constitution in the context of the restoration of the rights of ownership to the existing real property, the Constitutional Court has also held on more than one occasion that, in deciding whether compensation for the existing real property not to be restituted in kind is fair, regard should be paid to the fact that it was not the State of Lithuania that unlawfully nationalised or otherwise unlawfully expropriated the property of owners; the State of Lithuania, seeking, at least in part, to restore justice – to restore the violated rights of ownership, has opted for limited restitution rather than *restitutio in integrum*; the restoration of justice where owners are compensated for the existing real property not to be restituted in kind has two sides: it is the restoration of justice with respect to both owners and all society. The unlawful actions of the occupation government inflicted enormous damage not only on the owners whose rights of ownership were denied, but also on all society and the entire state; in restoring justice with respect to owners, the state may not ignore justice with respect to all society, whose members

also include the said owners; in the process of the restoration of the rights of ownership, the state must strive for a balance between the persons whose rights are to be restored and the interests of all society (rulings of 4 March 2003, 5 July 2007, and 20 May 2008).

Land that is not to be restituted in kind to owners due to its indispensability for the needs of society is to be purchased by the state and the owners concerned must be compensated for it in the forms and manner as established by means of a law; when establishing, by means of a law, the forms and procedure of compensating owners for land to be purchased by the state, the legislature must pay regard to a balance between the legitimate interests of a person and those of society (ruling of 10 May 2002).

In its ruling of 4 March 2003, the Constitutional Court held that, in deciding whether compensation for the existing real property not to be restituted in kind is fair, account should be taken not only of the actual market value of the property not to be restituted in kind, but also of the value of that property at the time when it was unlawfully nationalised or otherwise unlawfully expropriated, as well as of the changes in the quality and value of that property. The state may not establish any such forms and amounts of compensation that would be financially unbearable for society and the state, would place a disproportionately heavy financial burden on society, and would cause social tension and conflict. Otherwise, the constitutional imperative of a harmonious and just society would be violated.

In its ruling of 18 June 1998, the Constitutional Court held that the deduction of the cost of land betterment is not in itself incompatible with the provision of fair compensation. At the same time, the Constitutional Court noted that the legal regulation of compensation for property to be purchased by the state had been determined, among other factors, by the limited material and financial capacities of the state. When the state undertakes certain obligations under a law, these obligations must be supported by the available material and financial resources, otherwise the law becomes ineffective. Therefore, taking into consideration the capacities of the state, the legislature may establish the respective amounts of compensation for property to be purchased by the state.

In its ruling of 2 April 2001 ... the Constitutional Court held that the location of the particular land, as well as the fact when the land was categorised as urban territory, i.e. prior to or after its unlawful nationalisation, implies the discretion of the legislature to lay down different methods for establishing the price of land. When providing for a method for establishing the price of land, the legislature may not violate the principle of fair compensation and the constitutional principle of the equality of persons.

In the aforesaid ruling, the Constitutional Court noted that ... the fact of crucial importance is not what forms of compensation are established, but whether those forms can secure real and fair compensation for land to be purchased by the state.

At the same time, it should be noted that, in its ruling of 4 March 2003, the Constitutional Court pointed out that fair compensation for property unlawfully nationalised or otherwise unlawfully expropriated may not be equated to fair compensation for property taken for the needs of society, i.e. where property for the needs of society is taken under Article 23 of the Constitution, compensation for such property is fair if it is equal in value to the taken property.

The restoration of the rights of ownership to the existing real property, including the restoration whereby monetary compensation is paid for property to be purchased by the state, may not be equated to the taking of property for the needs of society by fairly compensating for such property as provided for in Paragraph 3 of Article 23 of the Constitution – the nature and purpose of these legal institutions are different (ruling of 23 August 2005).

The right of the heirs of former owners to restore the rights of ownership

The Constitutional Court's ruling of 8 October 2014

The Constitutional Court has noted that the right of ownership, in the sense of Article 23 of the Constitution, is not identical to the right of a citizen of the Republic of Lithuania to restore the rights of ownership to the existing real property according to the procedure established by means of a law (rulings of 22 December 2010, 11 September 2013, and 9 October 2013); in reality, persons to whom the rights of

ownership are to be restored do not have the subjective rights to the formerly held property until the moment when the respective state institutions adopt a decision on the restoration of the rights of ownership (rulings of 18 June 1998, 4 March 2003, 20 May 2008, 22 December 2010, and 19 June 2012); only after the authorised state institution adopts a decision to restore the rights of ownership to a person, that person acquires the rights of ownership, which are protected and defended under Article 23 of the Constitution (rulings of 4 March 2003, 23 August 2005, 22 December 2010, 19 June 2012, and 10 October 2013).

[...]

Consequently, under the Constitution, the right to inherit property is also not identical to the right of a citizen of the Republic of Lithuania to restore the rights of ownership to the existing real property according to the procedure established by means of a law; persons who have the right to inherit the property of a deceased former owner must not be identified with persons entitled to restore the rights of ownership to the existing real property according to the procedure established by means of a law.

It should be noted that, in view of the specificity of the relationships of the restoration of the rights of ownership, the discretion of the legislature to establish the conditions and procedure for the restoration of the rights of ownership includes its discretion to define, *inter alia*, the circle of the subjects to whom the rights of ownership are restored, i.e. to define persons who have the right to restore the rights of ownership. In implementing this discretion, the legislature may establish that the rights of ownership to the existing real property are restored not according to the legal norms governing inheritance relationships, but only under a special procedure established by means of a law, and not to all former owners and not all heirs of former owners, but only to those who meet the conditions established in the law.

The discretion of the legislature to establish different conditions for the restoration of the rights of ownership to land located in different territories

The Constitutional Court's ruling of 30 October 2014

... the necessity to guarantee the constitutional protection of the rights of ownership and the constitutional imperative of an open, just, and harmonious civil society imply the duty of the state, when establishing, by means of laws, the conditions and procedure for the restoration of the rights of ownership, to take account of the changed social, economic, and legal situation, as well as of other realities, and to ensure that, in the course of restoring the rights of ownership of some persons – owners, the rights and legitimate interests of other persons, i.e. those who are using the land of the former owners because it is necessary for the exploitation of the structures owned by these persons by right of ownership, are not violated. The fact that the Constitution does not prohibit the situation where the relationships of the restoration of the rights of ownership to the existing real property are regulated by means of a law in a differentiated manner, to the extent that the conditions and procedure for the restoration of the rights of ownership may vary, *inter alia*, depending on the territory where the property to which the rights of ownership are to be restored is located, means that the legislature has the discretion to establish differentiated conditions and procedure for the restoration of the rights of ownership to land located in urban areas and rural areas, as well as to land located in different urban areas, *inter alia*, land necessary for the exploitation of certain structures (buildings); however, in doing so, the legislature must pay regard to the Constitution, *inter alia*, the requirements stemming from the Constitution that, in the course of restoring the rights of ownership of former owners, the non-violation of the rights and legitimate expectations of other persons must be ensured; in addition, land may be not restituted in kind to persons entitled to have their rights of ownership restored and it may be purchased by the state only where there is the need of society for doing so.

The constitutional grounds for regulating restitution relationships (powers of the legislature to establish the manner, conditions, and procedure for restoring the rights of ownership; the right to restore the rights of ownership to the existing real property is not identical to the right of ownership; the legitimate expectation of citizens that their rights of ownership to the existing real property will be restored)

The Constitutional Court's ruling of 16 June 2015

In the acts of the Constitutional Court, the broad official constitutional doctrine of restitution – the restoration of the ownership rights of citizens to the existing real property – has been formulated.

The Constitutional Court has held on more than one occasion that, when regulating the restoration of the denied rights of ownership, the legislature has the discretion to establish the conditions and procedure for the restoration of the rights of ownership (*inter alia*, the rulings of 4 March 2003, 11 September 2013, 9 October 2013, and 10 October 2013). This discretion is objectively determined by the fact that, during the period following the unlawful expropriation of property, the system of the relationships of ownership changed in substance (rulings of 2 April 2001, 4 March 2003, and 11 September 2013); in the course of establishing, by means of laws, the conditions and procedure for the restoration of the rights of ownership, it is necessary to take account of the changed social, economic, and other conditions (ruling of 6 September 2007).

When establishing, by means of a law, the manner, conditions, and procedure for the restoration of the rights of ownership to the existing real property, the legislature is bound by the norms and principles of the Constitution, *inter alia*, by Article 23 of the Constitution, which consolidates the protection of the rights of ownership, by Article 29 thereof, which guarantees the equality of the rights of persons, as well as by the constitutional principle of a state under the rule of law, which encompasses legal clarity, legal certainty, legal security, the protection of legitimate expectations, and other requirements (rulings of 23 August 2005, 22 December 2010, 30 May 2013, and 30 October 2014).

The Constitutional Court has held that the right of ownership, in the sense of Article 23 of the Constitution, is not identical to the right of citizens of the Republic of Lithuania to have the rights of ownership to the existing real property restored according to the procedure established by means of a law (rulings of 22 December 2010, 11 September 2013, and 9 October 2013). In reality, persons to whom the rights of ownership are to be restored do not have the subjective rights to the formerly held property until the moment when the respective state institutions adopt a decision on the restoration of the rights of ownership (*inter alia*, the rulings of 18 June 1998, 4 March 2003, 20 May 2008, 22 December 2010, and 19 June 2012). Only after the authorised state institution adopts a decision to restore the rights of ownership to a person, that person acquires the rights of ownership, which are protected and defended under Article 23 of the Constitution (*inter alia*, the rulings of 4 March 2003, 23 August 2005, 10 October 2013, 8 October 2014, and 30 October 2014).

The Constitutional Court has also held that the legal regulation providing for certain alternatives to the restoration of the rights of ownership in kind is not in conflict with the objectives of restitution and the constitutional principle of the protection of the rights of ownership (rulings of 20 May 2008, 9 March 2010, 11 October 2012, and 30 October 2014). In this case, the fact of crucial importance is not what manner of compensation is established, but whether this manner ensures real and fair compensation (rulings of 2 April 2001, 11 September 2013, and 30 October 2014). In the laws governing restitution, the provision according to which compensation must be granted where the restitution of property in kind is impossible, is not in conflict with the principles of the inviolability of property and the protection of the rights of ownership, since fair compensation ensures the restoration of the rights of ownership (*inter alia*, the rulings of 5 July 2007 and 6 September 2007 and the decision of 4 July 2008).

The constitutional principle of the equality of the rights of persons, which is consolidated in Article 29 of the Constitution, means, *inter alia*, that the legislature, when it regulates the legal relationships of the restoration of the rights of ownership by means of a law, is not allowed to establish any such a legal regulation that would, in a different manner, treat persons entitled to have their rights of ownership restored

if there are not any such differences between those persons that would objectively justify their unequal treatment (ruling of 20 November 1996).

[...]

The Constitutional Court has also noted that, as such, amendments to the legal regulation made by the legislature by paying regard to the Constitution where such amendments modify the conditions and procedure for the restoration of the rights of ownership may not be regarded as the unequal treatment of the subjects of the restoration of the rights of ownership (ruling of 30 May 2013).

[...]

The fact that the state has decided that the denied rights of ownership must be restored, as well as the fact that the law regulating restitution relationships has been adopted and the restoration of the rights of ownership has started to be implemented, means that the state has created the legitimate expectation for persons entitled to have their rights of ownership restored that they will be able to implement this right in the manner, under the conditions and procedure, and within the time limits provided for in the law; the said legitimate expectation is protected and defended by the Constitution; at the same time, the state acquires the duty to regulate, by means of laws, the restoration of the rights of ownership to the existing real property in such a manner that the aforementioned legitimate expectation would be implemented in reality (rulings of 23 August 2005 and 20 May 2008, the decision of 4 July 2008, and the ruling of 19 June 2012).

However, the legitimate expectation of persons to have their rights of ownership to the existing real property restored does not mean that such rights must be restored by restituting the property in kind in all situations (rulings of 20 May 2008, 2 September 2011, 11 October 2012, and 30 October 2014).

Although the constitutional principle of a state under the rule of law implies the requirements of legal certainty, legal security, the protection of legitimate expectations, and other requirements, *inter alia*, those raised for the legal regulation of restitution relationships, it is not allowed to interpret the said principle as meaning that it does not, in general, permit the legislature, after it has started the restoration of the rights of ownership under certain conditions, to change those conditions later, *inter alia*, to establish new, additional conditions, in cases where such changes are aimed at protecting certain constitutional values that would be harmed or the preconditions for such harm would be created if the conditions for the restoration of the rights of ownership to the existing real property established earlier were not changed (rulings of 5 July 2007, 6 September 2007, and 30 May 2013); quite to the contrary, should it become clear that the restoration of the rights of ownership to the existing real property under the earlier established conditions and procedure inflicts harm on other values protected and defended by the Constitution or gives rise to the preconditions for such harm to appear, the legislature not only may, but also must, respectively amend the previously established conditions and procedure for the restoration of the rights of ownership to the existing real property. However, in such cases, regard must also be paid to the constitutional principle of proportionality, under which the applicable measures established by means of legal acts must be proportionate to the objective sought, while the rights of persons may not be limited more than necessary in order to reach a legitimate, universally significant, and constitutionally justifiable objective (ruling of 5 July 2007).

The constitutional imperatives of a harmonious, just, and open civil society, as well as the constitutional requirements of legal certainty, legal security, and the protection of legitimate expectations, imply that the launched process of restitution may not be extended for an unreasonably long time; due to an unreasonably long time during which the rights of ownership to the existing real property are restored, the essence of the institution of restitution itself can be distorted or even denied, the constitutional rights of ownership and other rights of a person can be violated, and the trust of people in the state and law can be undermined (rulings of 5 July 2007, 22 December 2010, and 19 June 2012).

2.2.5.3. Special objects of the right of ownership

Land, forests, and water bodies are special objects of the right of ownership

The Constitutional Court's ruling of 13 May 2005

... land, forests, and water bodies are among objects of ownership (also of private ownership). Their proper and rational use is a public interest protected by the Constitution.

It should especially be emphasised that, from the point of view of the right of ownership, land, forests, and water bodies are special objects, since the proper use and protection of land, forests, and water bodies are the medium of the existence of human beings as biological and social beings, as well as the medium for maintaining and spreading social ties, a condition for the survival and development of human beings and society, and the basis of the welfare of the nation. Ownership includes obligations. This constitutional imperative, linked with the aforesaid especially important function of land, forests, and water bodies, as objects of the natural environment, and with the nature of the said special objects of the right of ownership, means that, under the Constitution, it is necessary to establish a legal regulation that would consolidate the obligation of owners to contribute to ensuring the constitutionally enshrined public interest – the protection of the natural environment, wildlife and plants, individual objects of nature, and areas of particular value and the rational use of natural resources, as well as their restoration and increase – in such a manner that the land, forests, and water bodies that belong to them by right of ownership would be used only properly and rationally and that no harm would be inflicted on the said land, forests, and water bodies as the medium of the existence of human beings and society and one of the necessary conditions for the survival and development of human beings and society. This implies, *inter alia*, that laws may establish specific requirements defining the management, use, and disposal of plots of land, forests, and water bodies, as well as particular limitations on and conditions for the owners of these objects. In this context, it should be noted that, in its ruling of 27 May 1994, the Constitutional Court held that the specific purpose and situation of land, as compared with other objects of real property, also determines a special legal regulation of the relationships connected with land; it was held by the Constitutional Court in the rulings of 8 March 1995 and 25 September 1996 that the Constitution treats land as a universal value, which has a social function and must serve the welfare of the nation; it was held in the ruling of 1 June 1998 that the special ecological, social, and economic importance of forests to the environment and public interests determines certain limitations and restrictions on the rights of ownership of the owners of forests.

On the other hand, it is not permitted to deny the essence of the right of ownership by the said limitations, restrictions, or other requirements.

Limiting the rights of ownership of the owners of private plots of land, forests, and water bodies in order to ensure the protection of wildlife and its rational use (Articles 23 and 54 of the Constitution)

The Constitutional Court's ruling of 13 May 2005

... wildlife is also a specific constituent part of the natural environment in the sense that the living environment of wild animals comprises, *inter alia*, plots of land, forests, and water bodies, including those that also belong to legal and natural persons by right of ownership.

Thus, such legal situations are possible where the state, while seeking to ensure the public interest, i.e. the protection and rational use of wildlife (its resources), as well as its restoration and increase, may and, in certain cases, must establish a legal regulation whereby the ownership rights of the owners of private plots of land, forests, or water bodies are, to a certain extent, interfered with, but the essence of the ownership right of these owners is not denied.

Interpreting Article 23 of the Constitution within the context of the imperatives of protecting wildlife and ensuring the rational use of its resources, which are consolidated in Article 54 of the Constitution, it must be emphasised that ... the state is under the constitutional obligation to take care of wildlife, to ensure the protection, restoration, and increase of wildlife as a national value of universal importance, including, *inter alia*, the management (i.e. regulation and control) of populations of wild animals (their species). Thus, when protecting and defending the ownership rights of a person, it is not allowed to violate the public interest that wildlife resources should be used, restored, and increased in a rational manner and that wildlife should be protected. In the event of a clash of these two constitutional values – the ownership rights of a person and the public interest that wildlife resources would be used, restored, and increased in a rational

manner and that wildlife would be protected – it is necessary to find solutions that could ensure a fair balance between these values, i.e. that none of these values would be denied. This requirement also applies to the adoption of the legal acts regulating the respective social relationships and to the legal regulation established therein.

... in the course of regulating, by means of legal acts, the management (i.e. regulation and control) of populations of wild animals (their species), the rights of ownership of the owners of private plots of land, forests, and water bodies may be limited to the extent that it is necessary to achieve the said socially important objective, i.e. only to the extent that is necessary to ensure the protection of wildlife and the rational use of its resources, as well as its restoration and increase. If, while seeking to achieve the said socially important objective, it is inevitably necessary to limit ownership rights (without denying their essence) to a certain extent, there must be a fair balance between the said objective and the chosen means of limitation: it is allowed to establish only such means of limitation that would limit the rights of ownership of owners to the extent not greater than necessary.

Interpreting the provision, which stems from the Constitution, that ownership includes obligations in conjunction with Article 54 of the Constitution, it needs to be emphasised ... that the owners of private plots of land, forests, or water bodies, when enjoying the right to possess, use, and dispose of their property, may not violate the imperatives of the protection of wildlife and its rational use, as well as its restoration and increase, which are consolidated in Article 54 of the Constitution.

Implementing its constitutional obligation to take care of wildlife and ensure the protection, rational use, restoration, and increase of wildlife as a national value of universal importance, the state may establish the respective procedure for the use of plots of land, forests, and water bodies, where the said procedure will have to be followed by all persons, including the owners of private plots of land, forests, or water bodies. However, the said procedure may not limit the rights and legitimate interests of other persons, including those of the private owners of plots of land, forests, or water bodies, more than it is necessary in order to achieve the said socially important objective.

The right of owners to prohibit hunting in the plots of land that belong to them

The Constitutional Court's ruling of 13 May 2005

Under the Constitution, the legislature, when regulating hunting and related relationships, may not establish a legal regulation whereby hunting may be permitted in private land plots located in hunting grounds without the permission of the owners of those particular land plots. In this respect, an owner may not be subject to any restrictions on the grounds established in legal acts; the absence of such grounds does not mean that it is allowed to ignore the will of the owner that no hunting should take place in the land, forest, or water body belonging to him/her by the right of ownership. If it is intended to use a plot of land owned by a person by right of ownership for hunting, the owner of this land plot must be informed in a due manner – directly, and a reasonable and, thus, sufficient time period must be provided for during which the owner could have a real possibility of expressing his/her will freely concerning whether hunting can or cannot take place in that land plot, as well as under what conditions the owner agrees that hunting may take place in that land plot.

In this context, it should be noted that the ownership rights of an owner would not be automatically violated by such a legal regulation under which the fact that an owner of a private land plot that is located in hunting grounds and is intended to be used for hunting, after the owner has been duly informed about this, has failed within a reasonable time period to express his/her will whether hunting can or cannot take place in that particular land plot is considered to be his/her consent that hunting can take place in that land plot. Moreover, it is worth noting that it is possible to establish, by means of a law, various forms and procedure of expressing the consent of an owner of a private land plot located in hunting grounds that hunting can take place in that land plot, *inter alia*, that agreements may be concluded concerning the granting of the right to hunt in the land plot of the owner.

[...]

The Constitution consolidates the imperative that ownership includes obligations. ... under the Constitution, it is necessary to establish such a legal regulation that would lay down the obligation of owners themselves to efficiently contribute to the constitutionally consolidated public interest, i.e. ensuring the protection of the natural environment, wildlife and plants, individual objects of nature, and areas of particular value, as well as the rational use of natural resources and their restoration and increase, *inter alia*, the proper management of populations of wild animals (their species).

If an owner of a private plot of land, forest, or water body prohibits hunting in the land owned by him/her, the management (i.e. regulation and control) of populations of animals (their species) in the respective territory also becomes more difficult from the aspect that, in this way, damage may be inflicted on the legal rights and interests of the owner himself/herself, including the fact that huntable animals may cause certain damage to such owners. An owner who has prohibited the hunting of huntable animals in the land owned by him/her accepts a certain risk; there is no reason to require that someone else compensate for the aforementioned damage.

Cultural objects of state importance; the nationalisation of cultural objects of national importance (Paragraph 1 of Article 47 (wording of 23 January 2003) of the Constitution)

See 11. The state budget and finances, 11.2. The possession, use, and disposal of state-owned property. Property that belongs by right of exclusive ownership to the Republic of Lithuania, the ruling of 8 July 2005.

Land, forests, parks, and water bodies are special objects of the right of ownership; the duty of their owners, managers, and users to protect the natural environment; limiting the rights of ownership of the owners of private land plots located in areas of particular value in order to ensure the protection of the natural environment (Articles 23, 46, 53, and 54 of the Constitution)

The Constitutional Court's ruling of 14 March 2006

... land, forests, parks, and water bodies are special objects of the right of ownership, since the proper use and protection of land, forests, parks, and water bodies is a condition for the survival and development of human beings and society and the basis of the welfare of the nation. Under the Constitution, the natural environment, wildlife and plants, individual objects of nature, and areas of particular value are national values of universal importance; protecting such values and ensuring their rational use and increase is a public interest; the state is under the constitutional obligation to guarantee such an interest (ruling of 13 May 2005).

Article 54 of the Constitution provides that the state takes care of the protection of the natural environment, wildlife and plants, individual objects of nature, and areas of particular value, and supervises the sustainable use of natural resources, as well as their restoration and increase (Paragraph 1) and that the destruction of land and subsurface, the pollution of water and air, radioactive impact on the environment, as well as the depletion of wildlife and plants, are prohibited by law (Paragraph 2). It also needs to be mentioned that, under Paragraph 3 of Article 53 of the Constitution, the state and each person must protect the environment from harmful influences.

When interpreting, in conjunction with Article 54 of the Constitution, the provisions, which originate from the Constitution, whereby ownership includes obligations and the right of ownership is not absolute, it should be held that all owners, managers, and users of plots of land, forests, or water bodies must pay regard to the constitutional imperative of the protection of the natural environment, must protect the natural environment, may not make its state worse, and may not inflict harm on it.

[...]

Paragraph 3 of Article 46 of the Constitution prescribes that the state regulates economic activity so that it serves the general welfare of the nation. It is also necessary to pay regard to this constitutional imperative when regulating, by means of legal acts, the relationships linked with the ownership and use of land, forests, or water bodies, including those that are in areas of particular value, as well as with other activities in such locations.

[...]

... the state, while being under the constitutional obligation to act in such a way as to ensure the protection of the natural environment and individual objects of nature, the protection of areas of particular value, and the rational use, restoration, and increase of natural resources, may also establish, by means of laws, a legal regulation that would impose also such limitations and prohibitions on the owners of the respective objects located in areas of particular value whereby the rights of ownership of the owners of private plots of land would be interfered with to a certain extent. Such limitations and prohibitions must be proportionate to the sought constitutionally justifiable objective.

[...]

In this ruling of the Constitutional Court, it has been held that: the variety of areas of particular value can determine the particularities of their legal regime, the manner of the protection of objects that are located in such areas, as well as the conditions of and limitations and prohibitions on activity in such areas; such limitations and prohibitions may be applied, *inter alia*, to economic activity and construction in the said areas, as well as to any other activity due to which landscape in particular areas or individual objects located in those areas can be changed, etc.; the said limitations and prohibitions aimed to ensure the protection of areas of particular value, which is a public interest, may and must be imposed on all owners and users of such objects; it is also allowed to impose such limitations and prohibitions whereby the rights of ownership of all owners, including those of private land plots, forests, parks, or water bodies, are interfered with to a certain extent. It has also been held that all said limitations and prohibitions must be constitutionally justifiable; they must not restrict the rights of owners and other persons more than it is necessary in order to achieve the universally important objectives.

A differentiated regulation of the relationships linked with the ownership and use of land, forests, parks, and water bodies (Articles 47 and 54 of the Constitution)

The Constitutional Court's ruling of 14 March 2006

When regulating, by means of legal acts, the relationships linked with the ownership and use of land, forests, and water bodies, including those located in areas of particular value, attention must be paid to the fact that the said objects are very varied. This implies a differentiated legal regulation of the said relationships; the grounds for such a legal regulation stem from the Constitution itself.

[...]

When regulating, in a differentiated manner, the relationships that are linked with the ownership and use of land, forests, parks, and water bodies, including those that are in areas of particular value, the legislature may classify land and other objects of the natural environment under certain types (categories) and may establish a legal regime related to such objects, *inter alia*, the conditions, limitations, and prohibitions linked with ownership, use, as well as economic and other activity. The said limitations and prohibitions must be constitutionally justifiable.

Under the Constitution, land, forests, parks, and water bodies, including those that are located in areas of particular value, may belong by right of ownership to various subjects – the state, municipalities, as well as legal and natural persons.

Under Paragraph 4 (wording 20 June 1996) of Article 47 of the Constitution and Paragraph 1 (wording 23 January 2003) of Article 47 of the Constitution, *inter alia*, internal waters, forests, and parks of state importance belong by right of exclusive ownership to the Republic of Lithuania.

This constitutional provision means that the specified objects can belong by right of ownership only to the state, save the exceptions that stem from the Constitution itself; the state (its institutions, officials) may not adopt any decisions that could become the basis for transferring these objects from the ownership of the state into the ownership of other subjects (save the exceptions permitted by the Constitution) (ruling of 8 June 2005).

On the other hand, the fact that, under the Constitution, certain objects of state importance belong by right of exclusive ownership to the Republic of Lithuania does not mean that the respective objects that

belonged by right of ownership to certain persons and were later declared to be of state importance must necessarily be taken and made state ownership. In this context, it should be mentioned that, under Paragraph 3 of Article 23 of the Constitution, property may be taken only for the needs of society according to the procedure established by means of a law and must be justly compensated for.

It needs to be emphasised that not every object (*inter alia*, an object of nature) that belongs by right of ownership to the state should be declared to be of state importance. In addition, it needs to be noted that it is allowed to declare not any internal waters, forests, and parks as internal waters, forests, and parks of state importance and, thus, also as belonging by right of exclusive ownership to the state, but only those whose continuous value is so high and the necessity to preserve them to the posterity is so pressing that, if they were not declared to be of state importance, a threat to their preservation would arise.

Taking account of the special continuous value of internal waters, forests, and parks of state importance and the necessity to preserve them to the posterity, the state is under the constitutional obligation to take care of these objects and preserve them.

The recognition that land, forests, parks, or water bodies, including those that are located in areas of particular value, are of state importance implies a special legal regulation of the relationships linked with the supervision, protection, and use of such objects. In view of the special continuous value of the said objects and of their importance and necessity to preserve them to the posterity, a special individual legal regime may be established by means of a law in connection with such objects if compared with other objects.

It needs to be noted that, under the Constitution, the state also has the duty to take care of those natural objects of state importance that belong by right of ownership to other persons, but not to the state, and to ensure their protection. This duty of the state may not be interpreted as releasing the owners of the respective natural objects from the duty to contribute themselves to the preservation of the said natural objects and to observe the legal regime established with regard to those natural objects.

[...]

It should also be noted that, in cases where certain areas are, under the procedure established by means of a law, declared to be of particular value and/or the individual objects of nature therein are declared to be under protection, the duty may arise for the state to compensate the owners concerned for the losses sustained due to the changed legal regime of the respective areas and/or objects of nature.

Forests as special objects of the right of ownership

The Constitutional Court's ruling of 14 March 2006

... forests are special objects of the right of ownership ... it is possible to establish, by means of a law, a special, exceptional legal regime in connection with forests if compared with other objects. In its ruling of 1 June 1998, the Constitutional Court held that a special ecological, social, and economic importance of forests for the environment and public interests determines certain limitations and restrictions on the rights of ownership of the owners of forests. Such limitations and restrictions must be proportionate to the constitutionally justifiable objective sought.

[...]

... the legislature, in order to ensure the protection of forests and not to diminish their value, may establish the minimum sizes of forest holdings.

The legal regulation governing the relationships linked with the ownership and use of land as a special object of the right of ownership

The Constitutional Court's ruling of 30 March 2006

Land is a special object of the right of ownership (rulings of 13 May 2005 and 14 March 2006). The possession of plots of land by right of ownership may be one of the essential conditions for starting and developing a business and one of the necessary preconditions for engaging in economic activities. When legally regulating the relationships linked with the use of land for business and economic activities, regard must be paid to the specificity of the nature of land as a natural resource and as real property.

The Constitution gives rise to the possibility and necessity of legally regulating the relationships linked with the acquisition, possession, and transfer of land as a special object of the right of ownership (and as one of the conditions of a business – one of the preconditions for engaging in business activity) so that no preconditions are created for inflicting harm on land as a special value, defended and protected by the Constitution, or for violating other constitutional values.

The aforesaid possibility and necessity that arise from the Constitution imply, *inter alia*, that the legal regulation of these relationships must have certain particularities if compared with the legal regulation of other property relationships. The Constitutional Court has held that the grounds for a differentiated legal regulation connected, *inter alia*, with the ownership of land (as well as with the ownership of other objects of the natural environment) arise from the Constitution itself (ruling of 14 March 2006).

One of the grounds for the legal regulation of these relationships is the relation of a particular person (either a person who wishes to acquire land by right of ownership or a land owner) with the State of Lithuania, i.e. the fact that he/she is a national subject or a foreign subject: Paragraph 3 of Article 47 of the Constitution provides that, in the Republic of Lithuania, foreign entities may acquire the ownership of land, internal waters, and forests according to a constitutional law.

... land is not the same as regards its nature and useful features. The Constitutional Court has held that the Constitution does not prohibit categorising land and other objects of the natural environment according to various criteria, *inter alia*, according to the purpose of their use; this must be done by taking account of the characteristics of particular natural objects and other factors of the natural environment (ruling of 14 March 2006).

[...]

... agricultural land is a limited natural resource of exceptional value; its quality and areas with rich soil are constantly decreasing due to industrial impact, urban expansion, and other factors. In order to preserve the useful characteristics of agricultural land, the legislature has the duty to establish clear criteria of changing agricultural land into land for other uses and, in the course of changing land use, regard must be paid to the public interest.

When regulating, in a differentiated manner, the relationships linked with the ownership and use of land, the legislature, taking account of the type (category) of land, may establish a land legal regime, *inter alia*, the conditions, limitations, and prohibitions regarding ownership, use, as well as economic and other activity. The said limitations and prohibitions must be constitutionally justifiable.

Such limitations and prohibitions may be imposed on all natural and legal persons, regardless of the right by which agricultural land is possessed, i.e. the right of ownership, rent, use, or another right.

It needs to be especially emphasised that a law must establish such a legal regulation whereby plots of land, if they are categorised as agricultural land, would be used only for agricultural purpose by owners and/or users in order that the nature of agricultural land would be preserved until the purpose of agricultural land is changed according to the criteria established by means of a law.

Under the Constitution, the legislature has the right to establish the measures of control and sanctions for failure to comply with the established requirements. The legislature may also establish such means of social engineering that would induce the owners and/or users of plots of agricultural land to use the said plots only according to the established purpose of such land.

Taking account of the nature of land as a limited resource, as well as of the necessity to preserve the useful characteristics of agricultural land, it should be held that the legislature may also establish, by means of a law, the maximum sizes of land plots the acquisition of the ownership of which is allowed.

... the possibility of a differentiated legal regulation of the relationships linked with the ownership and use of land, *inter alia*, according to the purpose of land, also implies the possibility of establishing, by means of a law, different maximum sizes of agricultural plots of land and those of plots of land of different use the acquisition of the ownership of which is allowed.

However, it needs to be emphasised that, when establishing, by means of a law different maximum sizes of agricultural plots of land and of plots of land of different use the acquisition of the ownership of which is allowed, it is not permitted to violate the norms and principles of the Constitution, *inter alia*, the

imperative of social harmony, justice, proportionality, the equality of the rights of persons, and other principles. Under the Constitution, it is not permitted to establish any such a legal regulation whereby unequal economic conditions would be established to the existing or potential business subjects, the development of businesses would be hindered, or restrictions would be imposed on freedom of economic activity, the economic efforts useful to society, and initiative.

It needs to be underlined that the maximum sizes of agricultural plots of land the acquisition of the ownership of which is allowed must be determined by the nature of agricultural land and the public interest sought, but not by such criteria that cannot be justified constitutionally (as, for instance, the requirement that the acquirers of agricultural plots of land should farm that land by themselves or live in a particular locality, that they would be forced to choose a certain form of farming allowed under laws, etc.).

It needs to be held that, as such, the establishment (by means of a law) of the maximum sizes of agricultural plots of land the acquisition of the ownership of which is allowed does not mean that the right of ownership of a person, freedom of economic activity, or other constitutional rights and freedoms are constitutionally groundlessly restricted. On the contrary, the establishment of such maximum sizes may be one of the means creating the preconditions for the rational management of agricultural land, the preservation of tilled agricultural land, the proper development of agricultural business, the promotion of fair competition in agriculture, the non-permission to monopolise the production and the market, etc.

Such aspirations substantiating the maximum sizes of agricultural plots of land the acquisition of the ownership of which is allowed should be treated as expressing the public interest protected by the Constitution.

In this context, it should be mentioned that the Constitution does not contain any prohibition against establishing, by means of a law, the minimum sizes of agricultural plots of land the acquisition of the ownership of which is allowed as, for instance, the size that is necessary in order that a natural person could register a farm of a farmer, or in order to help prevent possible abuses as, for instance, the acquisition of agricultural plots of land and registering a farm of a farmer (allegedly meant for agricultural activities) only for the purpose of making use of the respective exceptions and concessions provided for by the legal regulation and using support provided by the state or other support and, subsequently, using the said agricultural land not for agricultural, but for other activities.

... under the Constitution, it is permitted in general to establish, by means of a law, different maximum sizes of plots of land of the same use (including agricultural land) the acquisition of the ownership of which is allowed.

However, under the Constitution, it is not permitted to establish any such a legal regulation where the maximum sizes of agricultural plots of land the acquisition of the ownership of which is allowed would be established in regard of different subjects by failing to follow the constitutionally justifiable criteria, since, otherwise, the preconditions would be created for violating the constitutional rights of some of those subjects, *inter alia*, the right to freely choose a business, the constitutional principle of the equality of the rights of persons, and other provisions of the Constitution; in addition, the preconditions would be created for distorting fair competition in the agricultural market.

Changing the use of land, converting forest land into other landed property (Articles 23 and 54 of the Constitution)

The Constitutional Court's ruling of 22 June 2009

The Constitutional Court has ... held that it is permitted to make changes in the designation of plots of land as agricultural land or as land for other uses (*inter alia*, after qualitative changes in the respective resources of land take place); in order to preserve the useful characteristics of agricultural land, the legislature has the duty to establish clear criteria of converting agricultural land into land for other uses and, in the course of changing the use of land, regard must be paid to the public interest (ruling of 30 March 2006); this also *mutatis mutandis* applies to regulating the relationships linked with converting the designation of plots of land as forest land.

Thus, according to the Constitution, the legislature may establish such a legal regulation according to which the designation of plots of land as land for forestry use may be altered and forest land may be converted into other landed property (*inter alia*, after qualitative changes in the respective resources of land take place). Under the Constitution, *inter alia*, Articles 23 and 54 thereof, the legislature, when regulating the relationships linked with converting the designation of plots of land as land for forestry uses into land for other uses, including the relationships linked with converting forest land into other landed property, is obligated to establish clear criteria of converting the designation of plots of land as land for forestry uses into land for other uses, as well as those of converting forest land into other landed property. When doing so, regard must be paid to the particularities of forest as a natural object, the general principles of environmental protection (*inter alia*, diminishing negative impact on the environment, efficient and combined utilisation), and the public interest. In this context, it should be noted that the legal regulation where a law establishes the conversion of plots of land for forestry uses into land for other uses, as well as the conversion of forest land into other landed property, may be differentiated, *inter alia*, by taking account of the forest value, the functional purpose, and the impact on the ecosystem.

[...]

... the fact that forest land may be converted into other landed property only in exceptional cases is in line with the special legal status of forest as a national value of exceptional importance.

The subsurface as a special object of the natural environment that belongs by right of exclusive ownership to the state (Paragraph 1 of Article 47 (wording of 23 January 2003) of the Constitution) (on the issue of regulating economic and other activity related to the use of the subsurface, see 2.4.2. Social rights, 2.4.2.3. The right to a healthy environment, the ruling of 16 December 2015 (“The duty of the state, when regulating economic and other activity related to the use of the subsurface, to ensure the protection of the subsurface and other objects of the natural environment (land, water, air, plants, wildlife) and human health, as well as the rational use of natural resources”))

The Constitutional Court’s ruling of 16 December 2015

... under Paragraph 1 of Article 47 (wording of 23 January 2003) of the Constitution, the subsurface belongs by right of exclusive ownership to the Republic of Lithuania. The subsurface is a special object of the natural environment; it belongs by right of exclusive ownership to the state and may never become the property of anyone else. The fact that the subsurface is under the exclusive ownership of the state provides the constitutional ground for establishing a special and specific legal regime of the protection and exploitation of the subsurface compared with other objects of nature.

2.2.6. The inviolability of the home of a human being

The inviolability of the home of a human being (Article 24 of the Constitution)

The Constitutional Court’s ruling of 29 December 2004

Article 24 of the Constitution prescribes:

“The home of a human being shall be inviolable.

Without the consent of the resident, it shall not be permitted to enter his home otherwise than by a court decision or according to 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 being.”

The principle of the inviolability of the home of a human being is consolidated in Article 24 of the Constitution. Other constitutional human rights and freedoms, i.e. the right to privacy, the right to ownership, etc., as well as acquired rights, are also ensured by the constitutional guarantee of the inviolability of the home of a human being – the guarantee that the home of a human being will be secure from encroachment by outsiders.

At the same time, it needs to be noted that, under the Constitution, the inviolability of the home of a human being is not absolute to the extent that, without the consent of the resident, it is permitted to enter his/her home when this is necessary to guarantee the values protected and defended by the Constitution

(Paragraph 2 of Article 24 of the Constitution). For instance, it is permitted to enter a home without the consent of the resident by a court decision adopted in order to ensure the values protected and defended by the Constitution or under the procedure established by means of a law where this is necessary to guarantee public order, apprehend a criminal, or save the life, health, or property of a human being. The aforementioned constitutional provisions imply the duty of the legislature to establish, by means of a law, the procedure for entering a home without the consent of the resident. When setting this procedure, the legislature must also regulate the manner how the respective court decision should be executed, as well as how a home is entered without the consent of the resident in cases where this is necessary to guarantee public order, apprehend a criminal, save the life, health, or property of a human being. When establishing such a legal regulation, the legislature must pay regard to the norms and principles of the Constitution.

2.2.7. The freedom to express convictions and freedom of information

2.2.7.1. The protection of the freedom to express convictions and freedom of information

The right to have convictions and to freely express them

The Constitutional Court's ruling of 13 June 2000

Democratic states under the rule of law recognise that, as regards its content, freedom of thought, conscience, and religion is a more specific expression of the broader human freedom to have convictions and freely express them. "Convictions" is a broad and diverse constitutional notion, embracing political and economic convictions, religious feelings, cultural disposition, ethical and aesthetical views, etc.

The freedom to have convictions means that an individual is free to form his/her own convictions and to choose world-view values, that he/she is protected from any coercion, and that it is not permitted to exert control over his/her convictions. The duty of state institutions is to ensure and protect this freedom of individuals. The content of convictions is the private matter of an individual.

The right to the free expression of convictions is inseparable from the freedom to have them. Freedom of the expression of convictions entails the possibility of expressing one's thoughts, views, and convictions orally, in writing, in symbols, or in other ways and by other means of the dissemination of information in an unhampered manner. At the same time, freedom of the expression of convictions includes the freedom not to disclose one's convictions and not to be compelled to disclose them.

Freedom of convictions and their expression consolidates ideological, cultural, and political pluralism. No views or ideology may be declared mandatory and thrust on an individual, i.e. a person who freely forms and expresses his/her own views and who is a member of an open, democratic, and civil society. This is an innate human freedom. The state must be neutral in matters of convictions; it does not have any right to establish a mandatory system of views.

The freedom to have convictions may not be limited at all; the freedom to express convictions may be limited under the procedure provided for by means of a law and only in cases where this is necessary to protect the values specified in Paragraph 3 of Article 25 of the Constitution, i.e. human health, honour or dignity, private life, or morals, or to defend the constitutional order. Freedom of the expression of convictions may also be temporarily limited upon the imposition of martial law or the declaration of a state of emergency (Article 145 of the Constitution). The validity of limitations on a right or freedom of a person in a democratic society should be assessed on the basis of the criteria of common sense and those of evident necessity; it must be in compliance with the concept and requirements of justice, as well as with the constitutionally consolidated possibilities and conditions for the limitation of the respective right or freedom (ruling of 13 February 1997). Any limitation on fundamental rights and freedoms should be connected with the rational relationship between competing values where such a relationship guarantees that the essence of the respective human right would not be violated by means of limitations.

The freedom to seek, receive, and impart information (Article 25 of the Constitution)

The Constitutional Court's ruling of 23 October 2002

Article 25 of the Constitution prescribes:

“Everyone shall have the right to have his own convictions and freely express them.

No one must be hindered from seeking, receiving, or imparting information and ideas.

The freedom to express convictions, as well as to receive and impart information, may not be limited otherwise than by law when this is necessary to protect human health, honour or dignity, private life, or morals, or to defend the constitutional order.

The freedom to express convictions and to impart information shall be incompatible with criminal actions – incitement to national, racial, religious, or social hatred, incitement to violence or to discrimination, as well as defamation and disinformation.

Citizens shall have the right to receive, according to the procedure established by law, any information held about them by state institutions.”

The constitutional freedom to seek, receive, and impart information and ideas unhindered is one of the foundations of an open, just, and harmonious civil society and a state under the rule of law. This freedom is an important precondition for implementing various rights and freedoms of a person, which are consolidated in the Constitution, since a person can implement most of his/her constitutional rights and freedoms in a fully fledged manner only if he/she has the right to seek, receive, or impart information unhindered. The Constitution guarantees and protects the interest of the public to be informed.

The provisions of Article 25 of the Constitution are inseparable from other provisions of the Constitution that consolidate the guarantees of the freedom of a person to seek, receive, and impart information unhindered: the provision of Paragraph 1 of Article 44, whereby censorship of mass information is prohibited; the provision of Paragraph 2 of the same article, under which the state, political parties, political or public organisations, or other institutions or persons may not monopolise the mass media; the provisions of Paragraph 2 of Article 33, which state that citizens are guaranteed the right to criticise the work of state institutions or their officials and to appeal against their decisions, and that persecution for criticism is prohibited, etc.

The freedom to seek, receive, and impart information is not absolute. The Constitution not only consolidates the freedom of an individual to seek, receive, and impart information, but also defines the limits of this freedom. For instance, under Paragraph 4 of Article 25 of the Constitution, the freedom to express convictions and to impart information is incompatible with criminal actions – incitement to national, racial, religious, or social hatred, incitement to violence or to discrimination, as well as defamation and disinformation; under Paragraph 3 of the same article, the freedom to express convictions, as well as to receive and impart information, may not be limited otherwise than by law when this is necessary to protect human health, honour or dignity, private life, or morals, or to defend the constitutional order; Article 28 of the Constitution provides that, while implementing his/her rights and exercising his/her freedoms, everyone must observe the Constitution and laws of the Republic of Lithuania and must not restrict the rights and freedoms of other people.

The values consolidated in the Constitution constitute a harmonious system; there is a balance among them. Under the Constitution, it is not permitted to establish any such a legal regulation that, by consolidating the guarantees of implementing freedom of information, would create the preconditions for violating other constitutional values and the balance among constitutional values. ...

A balance between the inviolability of private life and freedom of information (Articles 22 and 25 of the Constitution); compensation for damage inflicted as a result of imparting information about private life (Paragraph 2 of Article 30 of the Constitution)

See 2.2.4. The inviolability of private life, the ruling of 23 October 2002.

Imparting information about the private life of public persons

See 2.2.4. The inviolability of private life, the ruling of 23 October 2002.

The freedom to express convictions and freedom of information and the conditions for limiting these freedoms (Article 25 of the Constitution)

The Constitutional Court's ruling of 19 September 2005

The provisions of Article 25 of the Constitution constitute the constitutional foundation for freedom of information. They are all interrelated and supplement each other. Constitutional freedom of information is inseparable from constitutional freedom of convictions and their expression and is a condition of the latter.

Interpreting the content of freedom of information, which is consolidated in the Constitution, as innate freedom of an individual, the Constitutional Court has held that this freedom is an important precondition for implementing various rights and freedoms of a person, which are provided for in the Constitution, since a person can implement most of his/her constitutional rights and freedoms in a fully fledged manner only if he/she has the right to seek, receive, and impart information unhindered. The Constitution guarantees and protects the interest of the public to be informed (rulings of 23 October 2002, 26 January 2004, and 8 July 2005).

Under the Constitution, it is not permitted to establish any such a legal regulation that, by consolidating the guarantees of implementing freedom of information, would create the preconditions for violating other constitutional values and their balance. The freedom to seek, receive, and impart information is not absolute (rulings of 20 April 1995, 19 December 1996, 23 October 2002, and 26 January 2004).

The provision of Paragraph 4 of Article 25 of the Constitution, whereby the freedom to express convictions and to impart information is incompatible with criminal actions – incitement to national, racial, religious, or social hatred, incitement to violence or to discrimination, as well as defamation and disinformation, means that the prohibition on imparting information of the said content is absolute. Thus, the constitutional concept of freedom of information does not encompass the alleged freedom (which denies the constitutional values in substance) to perpetrate the criminal actions specified in Paragraph 4 of Article 25 of the Constitution, i.e. to impart such thoughts, views, etc. by which national, racial, religious, or social hatred, as well as violence or discrimination, is incited, persons are defamed, or society and its individual members are disinformed otherwise (ruling of 8 July 2005). Moreover, the concept of constitutional freedom of information does not encompass war propaganda, which is prohibited by Paragraph 2 of Article 135 of the Constitution.

The provision of Paragraph 4 of Article 25 of the Constitution, according to which the freedom to express convictions and to impart information is incompatible with criminal actions – incitement to national, racial, religious, or social hatred, incitement to violence or to discrimination, as well as defamation and disinformation, also means that the legislature must, by means of a law, establish such a legal regulation whereby incitement to national, racial, religious, or social hatred, incitement to violence or to discrimination, as well as defamation and disinformation, if such incitement, defamation, or disinformation attempt to deny the respective constitutional values in substance, would be prosecuted as criminal actions and legal responsibility would be established for such incitement, defamation, or disinformation as criminal actions.

At the same time, it needs to be noted that the said provisions of Paragraph 4 of Article 25 of the Constitution, *inter alia*, the expression “criminal actions”, may not be interpreted only linguistically, i.e. as meaning that the constitutional freedom to express convictions and impart information is incompatible with only such actions for which laws establish criminal responsibility. The said constitutional freedom is also incompatible with imparting such thoughts, views, etc. that incite national, racial, religious, or social hatred, violence or discrimination, or by which persons are defamed and society or its individual members are disinformed otherwise for which laws establish not only criminal, but also other responsibility. Thus, under the Constitution, the constitutional freedom to express convictions and impart information is incompatible with any actions that are contrary to law and by which national, racial, religious, or social hatred, as well as violence or discrimination, are incited and by which persons are defamed and society or its individual members are disinformed otherwise. If the said provision of Paragraph 4 of Article 25 of the Constitution,

inter alia, its expression “criminal actions”, were interpreted differently (i.e. in a narrowing manner), the constitutional imperative of an open, just, harmonious civil society, the constitutional principle of a state under the rule of law, and other provisions of the Constitution would be disregarded.

Under Paragraph 3 of Article 25 of the Constitution, the freedom to express convictions, as well as to receive and impart information, may not be limited otherwise than by law when this is necessary to protect the constitutional values specified in this paragraph – human health, honour or dignity, private life, morals, or the constitutional order. It should be emphasised that the list of the constitutional values enumerated in Paragraph 3 of Article 25 of the Constitution may not be interpreted as an exhaustive and final one, i.e. as giving no permission to limit the freedom to receive and impart information when this is necessary to protect other constitutional values, which are not mentioned *expressis verbis* in Paragraph 3 of Article 25 of the Constitution.

It also needs to be noted that freedom of information, which is consolidated in Article 25 of the Constitution, may be temporarily limited after martial law is imposed or a state of emergency is declared (Article 145 of the Constitution).

... under the Constitution, it is permitted to limit human rights and freedoms, including the right to express convictions and to receive and impart information and ideas, if the following conditions are observed: the limitations are established by means of a law; the limitations are necessary in a democratic society in order to protect the rights and freedoms of other persons, the values consolidated in the Constitution, and the constitutionally important objectives; the limitations do not deny the nature and essence of rights and freedoms; and the constitutional principle of proportionality is followed.

... under the Constitution, the legislature, has the duty to establish such a legal regulation that would ensure that public power (its institutions, officials) will be able to promptly take the measures preventing such acts by which, under the disguise of freedom of information, the values consolidated, protected, and defended by the Constitution are infringed upon.

The provisions of Paragraphs 3 and 4 of Article 25 of the Constitution must also be interpreted in the context of the provision of Paragraph 1 of Article 30 of the Constitution, whereby a person whose constitutional rights or freedoms are violated has the right to apply to a court. The right of a person to apply to a court due to a fact that, in his/her opinion, his/her freedom of information is limited, means that a person has the right to challenge any decision of public power (its institution or official) in a court in cases where, in his/her opinion, the said decision limits his/her right to seek, receive, or impart information. Under the Constitution, the legislature has the duty to establish, by means of a law, a legal regulation that would ensure the effective judicial protection of this right.

It also needs to be noted that the constitutional right of a person to apply to a court due to the fact that, in his/her opinion, his/her freedom of information is limited also implies his/her right to raise the issue of the constitutionality of those limitations and/or prohibitions on freedom of information that are laid down in the legal acts applicable in the respective case.

As mentioned before, constitutional freedom of information is an innate freedom of an individual. In its rulings, the Constitutional Court has held on more than one occasion that everything that is linked with human rights and freedoms must be regulated by means of laws; such laws must be in compliance with the Constitution. Therefore, a legal regulation defining the limits on the implementation of freedom of information must be established by means of a law.

Under Paragraph 3 of Article 25 of the Constitution, the legislature must define, by means of a law, the content of information the imparting of which is prohibited or limited, the manner by means of which the imparting of certain information is prohibited, as well as other conditions of imparting particular information, if this in any manner limits freedom of information. The legislature also must, by means of a law, establish: responsibility for non-compliance with the said prohibitions and limitations, including that for imparting such information the imparting of which is prohibited; the subjects that have the powers to supervise compliance with the prohibitions and/or limitations, established by means of laws, on imparting certain information; the subjects that apply responsibility for non-compliance with the prohibitions and/or

limitations, established by means of laws, on imparting certain information; effective measures for the judicial protection of freedom of information.

It is worth noting that the Constitution also does not preclude the regulation of certain relationships by means of substatory legal acts, *inter alia*, government resolutions, where such relationships are linked with receiving and imparting information, including the relationships linked with the supervision of and control over compliance with the prohibitions, established by means of laws, on imparting information and/or limitations on imparting information. ... the Government, while regulating the aforesaid relationships by means of its resolutions, may not establish any such a legal regulation that would not be based on the Constitution and laws, or any such a legal regulation that would compete with a legal regulation established by means of laws.

[...]

... under the Constitution, all persons have the duty not to impart any such information the imparting of which is prohibited by means of laws, as well as the duty not to violate the procedure for imparting restricted information. Persons who become aware of the fact that they, in any manner, participate in imparting information the imparting of which is prohibited under laws or that they otherwise contribute to imparting such information, or that they, in any manner, violate the procedure for imparting information the imparting of which is limited by means of a law must immediately discontinue such activity.

[...]

Thus, the imparting of information not to be disclosed to the public and a violation of the procedure for imparting restricted information are violations of law, which are not tolerated by the Constitution.

[...]

Under the Constitution, the legislature has the duty to regulate, by means of a law, the relationships linked with seeking, receiving, and imparting information in such a way that, on the one hand, would ensure one of innate human rights – freedom of information (implying, *inter alia*, freedom of the electronic media) and, on the other hand, would not violate, but protect and defend, constitutional values in the course of implementing freedom of information.

Electronic communications and telecommunications are undergoing fast development. The possibilities of seeking, receiving, and imparting information by making use of electronic information technologies, *inter alia*, the internet, are constantly expanding. It needs to be noted that, at the same time, the social relationships linked with imparting information on the internet are becoming more complex. Therefore, it is necessary that legislation do not fall behind the progress of information technologies and changes, determined by this progress, in particular social relationships, *inter alia*, that legislation reflect the particularities of the subjects of the said relationships where the said particularities objectively determine the necessity to differentiate the legal status of those subjects.

Limiting freedom of information (*inter alia*, advertising) in order to protect human health (Paragraph 3 of Article 25 of the Constitution)

The Constitutional Court's ruling of 29 September 2005

... under Paragraph 3 of Article 25 of the Constitution, freedom of information may be limited by law if this is necessary to protect human health. Thus, freedom of advertising may also be limited on the said grounds.

[...]

In order to protect human health – a constitutional value, freedom of information (which ... *inter alia*, encompasses freedom of advertising) may also be limited to a certain extent by means of a law. However, such limitation of this constitutional freedom must be necessary in a democratic society and the chosen measures must be proportionate to the objective sought.

It needs to be emphasised that the legislature, when limiting, by means of a law, freedom of advertising (at the same time, freedom of information) in order to protect human health, must establish such a legal regulation that would maintain a reasonable balance between the obligation to the state, established in the Constitution, to take care of human health and the constitutional right of an individual to seek, receive, and

impart information. Information, also that of advertising content, may not be limited due to the sole fact that, in the opinion of the legislature, it is not useful to the people, although it is not harmful to them at the same time. It should also be noted that selective limitations on advertising, i.e. limitations on imparting and/or receiving advertising by means of certain sources and the non-limitation of imparting and/or receiving advertising by means of other sources is allowed only when such differentiation is objectively justifiable. It should especially be noted that limitations on freedom of advertising established by means of laws may not, under the Constitution, be greater than it is necessary, *inter alia*, in order to protect human health.

Control over imparting information on medicines (*inter alia*, the advertising of medicines) where such information may create the preconditions for harming human health

The Constitutional Court's ruling of 29 September 2005

... by advertising medicines (irrespective of whether or not this activity is charged), an attempt is made to induce the usage of certain medicines, while this can create the preconditions for harming human health – a value that is consolidated, protected, and defended by the Constitution. Such effects can also be caused by misleading information (of both advertising and non-advertising content) about medicines, which, in some cases, can amount to disinformation, whose dissemination ... is not covered by the constitutional concept of freedom of advertising.

Under the Constitution, the legislature has the duty to establish, by means of a law, such a legal regulation that would prevent imparting information (of both advertising and non-advertising content) about medicines in cases where such information can create the preconditions for harming human health. Under the Constitution, the legislature also has the duty to establish, by means of a law, such a legal regulation that would prevent imparting misleading information (of both advertising and non-advertising content) about medicines and other information about medicines where such information can create the preconditions for harming human health. By establishing, by means of a law, the said constitutionally necessary legal regulation, the legislature must also establish an effective manner of control over advertising medicines and over other information about medicines where such information can create the preconditions for harming human health. In this context, attention should be paid to the fact that, in foreign democratic states, various ways of effective control over information about medicines (*inter alia*, the advertising of medicines) where imparting such information can create the preconditions for harming human health are established as, for example: the preliminary verification of information imparted by the mass media, limitations on imparting such information, the powers of state institutions to take action to discontinue imparting such information (*inter alia*, misleading advertising), etc.

... the Constitution also does not prevent the regulation of certain relationships by means of statutory legal acts where the said relationships are linked with receiving and imparting information, including the relationships linked with supervision and control over compliance with prohibitions, established by means of laws, on imparting information and/or limitations on imparting information; however, statutory legal acts may not establish any such a legal regulation that would not be based on the Constitution and laws, or any such a legal regulation that would compete with a legal regulation established by means of a law.

... a law must establish the main elements of limitations on advertising medicines and on other information about medicines where imparting such information can create the preconditions for harming human health as, for instance: what information about medicines (*inter alia*, advertising medicines) is subject to limitation or subject to prohibition altogether; the manner of the limitation of the said information (advertising) and/or the conditions of imparting it; the scope (extent) of prohibitions; the criteria according to which medicines are categorised as such whose advertising can create the preconditions for harming human health and, due to this, is subject to limitation or subject to prohibition altogether; the subjects who have the powers to supervise how the prohibitions and/or limitations to impart particular information, which are established in laws, are observed; responsibility for non-compliance with

the aforesaid requirements, which are established by means of laws; the subjects that have the powers to hold someone liable for the respective violations of laws; the effective measures of the judicial protection of freedom of advertising, etc.

[...]

Under the Constitution, the state must regulate economic activity in order to ensure the implementation of the state function to take care of the health of people. Therefore, the state, while regulating economic activity by means of laws and paying regard to the Constitution, may establish specific limitations on the economic activity that is, *inter alia*, related to the protection of human health, including advertising medicines and other information about medicines the imparting of which can create the preconditions for inflicting harm on human health.

In this context, it should also be mentioned that, as held by the Constitutional Court in its ruling of 13 February 1997, the limitation of advertising is one of the ways to reduce the unrestricted promotion and consumption of substances that are harmful to human health.

... the legislature must legislatively establish such a legal regulation that would preclude any preconditions for inducing the uncontrolled use of medicines, which might harm human health.

... the legislature has broad discretion to choose how, while taking account of the fact that certain medicines can harm human health and imparting information about them can create the preconditions for harming human health, to differentiate the legal regulation governing the acquisition, circulation, and use of medicines and the imparting of information about medicines (including the advertising of medicines). One of the grounds (which is widespread all over the world) for such differentiation laid down by the legal regulation is grouping medicines into prescriptive and non-prescriptive, whereby certain medicines, i.e. prescriptive ones, due to the fact that their unrestricted acquisition, circulation, and use can create the preconditions for inflicting harm on human health, may be acquired, be in circulation, and be used only upon medical prescription, while the acquisition, circulation, and use of other, non-prescriptive, medicines are not restricted. The categorisation of certain medicines (their groups) as prescriptive or non-prescriptive ones and the prescription of medicines to patients is a matter within the professional competence of specialists in the respective area.

... the said grouping of medicines into prescriptive and non-prescriptive ones may be (and actually is) one of the grounds for differentiating, by means of a law, the legal regulation of the relationships linked with the imparting of information about medicines (*inter alia*, the advertising of medicines).

The interest of the public to be informed (for more, see 2.2.7.2. Freedom of the media)

The Constitutional Court's ruling of 21 December 2006

The interest of the public to be informed, which is guaranteed and protected by the Constitution, implies the respective constitutional obligations for the state. On the one hand, the state (its institutions and officials) has not only the duty of negative content not to hinder the free flow of information and ideas, but also the duty of positive content to take all necessary measures so that other persons would not hinder the said flow. In this context, it should be emphasised that Article 44 of the Constitution provides that censorship of mass information is prohibited (Paragraph 1) and that the state, political parties, political or public organisations, or other institutions or persons may not monopolise the mass media (Paragraph 2).

The mission of the state as the political organisation of all society is to ensure human rights and freedoms and to guarantee the public interest (rulings of 30 December 2003, 13 December 2004, 29 December 2004, 16 January 2006, and 21 September 2006). The implementation of a public interest, as an interest of society that is recognised by the state and is protected by law, is one of the most important conditions for the existence and evolution of society itself (rulings of 6 May 1997, 13 May 2005, and 21 September 2006). The same applies to the interest of the public to be informed. The free and universal exchange of information and imparting it in an unrestricted manner are a particularly important factor in democratic processes. This factor ensures not only the formation of individual opinions and subjective convictions, but also the formation of group views, including political will, as well as the formation of the

will of the whole Nation (ruling of 13 February 1997). It needs to be emphasised that the state, as the common good of all society (rulings of 25 May 2004, 19 August 2006, and 21 September 2006), is under the constitutional obligation not only not to hinder the free flow of information and ideas and to take all necessary measures so that other persons would not hinder the said flow, but also to take measures (positive activity) itself (through its institutions) in order to inform the public about the most important processes taking place in society and the state so that citizens (and other residents) would receive as accurate information as possible about things they should know, citizens could participate in the adoption of decisions of state importance, and people could participate in the adoption of other decisions related to handling public affairs, as well as decisions related to the implementation of their rights and freedoms. Otherwise, the preconditions would be created not only for violating the rights of a person (including the right of citizens, consolidated in Paragraph 1 of Article 33 of the Constitution, to participate in the governance of their state both directly and through their democratically elected representatives and the right of citizens, consolidated in Paragraph 2 of the same article, to criticise the work of state institutions or their officials and to appeal against their decisions), but also for violating other values, which are consolidated, defended, and protected by the Constitution.

The interest of the public to be informed, which is guaranteed and protected by the Constitution, as well as constitutional freedom of information, can be ensured only when various mass media function freely (this does not mean that there are no restrictions at all) in the state. A mature and developed system of the mass media is a necessary condition for ensuring the public interest, i.e. the interest of the public, to be informed. The Constitution gives rise to freedom of the mass media and the duty of the legislature to establish the guarantees of freedom of the mass media by means of a law (rulings of 23 October 2002, 4 March 2003, and 8 July 2005).

Limiting freedom of information

The Constitutional Court's ruling of 15 May 2007

In its acts, the Constitutional Court has held more than once that freedom of information is not absolute and that the Constitution does not permit the establishment of any such a legal regulation that, by consolidating the guarantees of implementing freedom of information, would create the preconditions for violating other constitutional values and their balance. It needs to be noted that, under the Constitution, the state has the duty not only to guarantee the secrecy of information that constitutes a state secret, but also the protection of certain other information, i.e. in order that there would not be any arbitrary attempts to find out or impart information the disclosure of which could inflict damage on the rights, freedoms, and legitimate interests of a person, as well as on other values consolidated, defended, and protected by the Constitution; for instance, in addition to a “state secret”, Paragraph 1 of Article 117 of the Constitution indicates a “professional secret”, a “commercial secret”, as well as “the secrecy of private or family life”; Article 22 of the Constitution consolidates, *inter alia*, the inviolability of personal correspondence, telephone conversations, telegraph messages, and other communications, as well as the prohibition on collecting information concerning the private life of a person otherwise than upon a reasonable court decision and only according to the law; various articles (parts thereof) of the Constitution consolidate the principle of the secrecy of voting during elections; it needs to be noted that not all information that must be protected in such a manner is explicitly mentioned in the text of the Constitution. The Constitutional Court has held that the legislature must define, by means of a law, the content of information the imparting of which is prohibited or limited, a manner by means of which the imparting of certain information is prohibited, as well as other conditions for imparting particular information if this limits freedom of information in any manner; the legislature also must, by means of a law, establish the following: responsibility for disregard of the said prohibitions and limitations, including responsibility for imparting such information the imparting of which is prohibited; the subjects that have the powers to supervise compliance with the prohibitions and/or limitations, established by means of laws, on imparting certain information; the subjects that apply responsibility for disregard of the prohibitions and/or limitations,

established by means of laws, on imparting certain information; effective measures for the judicial protection of freedom of information ... (ruling of 19 September 2005).

The protection of state secrets (other classified information)

The Constitutional Court's ruling of 15 May 2007

The state secret is a constitutional institution. The notion "state secret" is *expressis verbis* employed in the Constitution (Paragraph 1 of Article 117). A state secret is such information not to be made public or imparted the disclosure of which could inflict damage on the state as the common good of all society and as the political organisation of all society, whose purpose is ensuring human rights and freedoms and guaranteeing the public interest.

[...]

Certain requirements are established with regard to persons who are granted the right of access to information that constitutes a state secret; these requirements are related to the reliability and loyalty of such persons to the State of Lithuania; the said requirements should be linked with the trust of the state in that person; the distrust by the state of a certain person can be determined by the activity of that person, *inter alia*, by the committed violations of law, as well as by the personal qualities of that person, his/her personal contacts, as well as other important circumstances; permission to have access to state secrets may be granted only to such persons whose activity, personal qualities, contacts, etc. cannot give rise to concerns that, if they learn a state secret, a threat will be posed to, or all the more that damage will be inflicted on, the sovereignty of the state, its territorial integrity, constitutional order, and defence power, other especially important state interests, and the foundations of the life of society and the state, and that there will be violations of the most important relationships regulated, defended, and protected by the Constitution, which need to be protected and defended specifically because of the fact that certain information, according to laws, is classified; persons who have lost the trust of the state in them must be deprived of the right to access or handle information that constitutes a state secret.

The disclosure of a state secret may pose a threat to or even inflict damage on the sovereignty of the state, its territorial integrity, constitutional order and defence power, other especially important state interests, and the foundations of the life of society and the state; if the disclosure (finding out, imparting) of information that constitutes a state secret were not prevented and if such disclosure were not legally prosecuted, the preconditions would be created for violating even the most important relationships regulated, defended, and protected by the Constitution and, thus, also for giving priority to the interest of a certain person or persons to know and impart certain information at the expense of the public interest.

[...]

Where laws regulate the relationships linked with state secrets (or other classified information) and their protection, it is necessary to establish not only what information is regarded as a state secret (or what information constitutes classified information) and responsibility for its disclosure, but also what persons and under what procedure and conditions can dispose of (or can be deprived of the right to dispose of) state secrets (or other classified information), as well as in what cases and under what procedure and conditions information that constitutes a state secret (or other classified information) may be declassified and who is empowered to do so. Such persons, procedure, and conditions may be differentiated, *inter alia*, according to the types (categories) of state secrets (or other classified information), which are established by the legislature.

When revealing the content of the constitutional institution of the state secret, it should also be noted that the constitutional obligation to protect state secrets (or other classified information) also arises from the international treaties that are ratified by the Seimas The international treaties ratified by the Seimas, as well as membership of the Republic of Lithuania in international organisations, imply that the Republic of Lithuania (its institutions and officials) may also dispose of secrets that belong to other states or international organisations. There is no doubt that the constitutional obligation to protect state secrets (or other classified information) also includes the obligation to protect secrets that belong to other states or

international organisations in cases where such secrets are disposed of by the Republic of Lithuania (its institutions and officials). ...

All this is *mutatis mutandis* applicable to secrets that belong to other states or international organisations in cases where such secrets can be disposed of by the Republic of Lithuania (its institutions, officials) under such international treaties of the Republic of Lithuania the ratification of which by the Seimas is not required under the Constitution and laws, or in cases where such secrets can be disposed of by the Republic of Lithuania (its institutions, officials) under international agreements concluded by state institutions.

[...]

... when state institutions decide whether a person has the right to handle or access information that constitutes a state secret (or other classified information), it is necessary to pay regard to the imperative that, in order that a person would have such a right, the state must have unconditional trust in him/her and that a person who has lost the trust of the state in him/her, must be deprived of the said right.

[...]

When choosing an institutional mechanism of ensuring the protection state secrets (or the protection of other classified information), the legislature has broad discretion. For instance, it is allowed, in the system of state security, to establish an institution that will have the powers to control how state secrets (or other classified information) are protected and to adopt the respective decisions that are binding on the subjects of secrets.

The protection of state secrets (other classified information) in court proceedings; the right of a judge to have access to a state secret or other classified information (Articles 109 and 117 of the Constitution)

See 9.1. Courts, 9.1.6. Court proceedings and court decisions, the ruling of 15 May 2007.

The publication of legal acts that contain information constituting a state secret or other classified information

The Constitutional Court's ruling of 27 June 2007

Such legal acts may be adopted that contain information constituting a state secret or other classified information. The Constitutional Court has held that, under the Constitution, the state has the duty to guarantee the secrecy of information that constitutes a state secret; the disclosure of a state secret may pose a threat to or even inflict damage on the sovereignty of the state, its territorial integrity, or on other especially important state interests or the foundations of the life of society and the state; when the relationships linked with state secrets (or other classified information) and their protection are regulated by means of laws, it must be established what persons and under what procedure and conditions can dispose of state secrets (or other classified information) (ruling of 15 May 2007). The legislature has the duty to establish such ways and procedure of the official publication of legal acts that contain information constituting a state secret or other classified information where the said ways and procedure would guarantee the protection of the secrecy of such information, without denying, at the same time, the imperatives of the publication of legal acts, which arise from the Constitution, *inter alia*, by ensuring the accessibility of legal acts to the respective legal subjects, whose rights and duties are enshrined in those legal acts. On the other hand, the Constitutional Court has held that the legal normative acts regulating the relationships linked with constitutional human rights and freedoms and with their implementation may not bear any classification markings at all (ruling of 5 April 2000).

The protection of state secrets (other classified information) (for more on assessing the reliability and loyalty to the State of Lithuania of persons who seek to hold or hold a position in state service where such a position is connected with the use or protection of classified information, see 4. The state and its institutions, 4.3. State service, the ruling of 7 July 2011)

The Constitutional Court's ruling of 7 July 2011

... under the Constitution, persons seeking to hold or holding a position in state service where such a position is connected with the use or protection of classified information are subject to the special condition – the exceptional and completely unquestionable reliability of these persons and their loyalty to the State of Lithuania. The reliability of a person who seeks to hold or holds a position in state service that is connected with the use or protection of classified information, as well as the loyalty of that person to the State of Lithuania, must be assessed by taking account of all significant circumstances characterising that person, *inter alia*, his/her activity, committed violations of law, his/her professional and personal qualities, reputation, and ties with other persons. Therefore, the legislature has broad discretion when regulating the relationships connected with the protection of state secrets and official secrets, *inter alia*, when establishing the criteria for the reliability and loyalty to the State of Lithuania of persons who seek to hold or hold a position in state service where such a position is connected with the use or protection of classified information, as well as the procedures for screening such persons. In the course of implementing the said discretion, the legislature must pay regard to the norms and principles of the Constitution, *inter alia*, the constitutional principle of a state under the rule of law.

[...]

... it is not permitted to establish any such a legal regulation that would allow the state institution authorised under the law to declare, on the basis of minor circumstances alone, the unreliability (or the disloyalty to the State of Lithuania) of a person seeking to hold or holding a position in state service where such a position is connected with the use or protection of classified information. However, this does not mean that the legislature may not provide for such measures of the protection of classified information that would make it possible in advance to prevent threats to the security of classified information and, at the same time, threats to state interests.

[...]

... the geopolitical orientation of the State of Lithuania means membership of the Republic of Lithuania in the EU and NATO and the necessity to fulfil the respective international obligations related to the said membership, *inter alia*, in the field of the protection of classified information. Therefore, when regulating the protection of state secrets, the Republic of Lithuania may not establish lower standards of the protection in question than those pertaining to the protection of classified information in the EU and NATO. By following the norms and principles of the Constitution, it is also possible to establish higher standards of the protection of state secrets of the Republic of Lithuania.

The interest of the public to be informed (Article 25 of the Constitution) (for more on the right of the electorate to receive significant information about candidates for the position of members of municipal councils, see 10. Local self-government and governance, 10.2. Local self-government, the ruling of 17 November 2011)

The Constitutional Court's ruling of 17 November 2011

... one of the foundations of an open, just, and harmonious civil society and a state under the rule of law is the constitutional right to receive information, which is consolidated in Article 25 of the Constitution.

The Constitution guarantees and protects the interest of the public to be informed (*inter alia*, the rulings of 8 July 2005, 19 September 2005, 29 September 2005, and 21 December 2006). The constitutional right to receive information is an important precondition for implementing various rights and freedoms of a person, which are consolidated in the Constitution (ruling of 21 December 2006).

... the interest of the public to be informed assumes especial importance in the process of elections to political representative institutions, *inter alia*, elections to municipal councils. During the electoral process,

real possibilities must be created for persons implementing the active electoral right, who decide on the eligibility of a candidate to be a member of the municipal council, to receive information about the major facts of the life of such a person, which may be of significance when representing the interests of voters and handling public affairs.

2.2.7.2. Freedom of the media

Freedom of the media (Article 25 of the Constitution)

The Constitutional Court's ruling of 23 October 2002

Article 25 of the Constitution and other provisions of the Constitution consolidating and guaranteeing the freedom of an individual to seek, receive and, impart information give rise to freedom of the media. Under the Constitution, the legislature has the duty to establish the guarantees of freedom of the media by means of a law.

The right of a journalist to preserve the secret of the source of information

The Constitutional Court's ruling of 23 October 2002

... by consolidating the right of a journalist to preserve the secret of the source of information and not to disclose the source of information as one of the guarantees of freedom of the media, the legislature must pay regard to the imperative of an open, just, and harmonious civil society and the constitutional principle of a state under the rule of law, which are consolidated in the Constitution, and must not violate the rights and freedoms of a person. It is not permitted to establish, by means of laws, any such a legal regulation whereby, while consolidating the right of a journalist to preserve the secret of the source of information and not to disclose the source of information, the preconditions for violating the values consolidated in the Constitution would be created.

Thus, by establishing, [by means of a law], the right of a journalist to preserve the secret of the source of information and not to disclose the source of information, the legislature may not establish such a legal regulation that would create the preconditions for not disclosing the source of information even in cases where this is necessary in a democratic state to disclose the source of information due to vitally important or other especially significant interests of society, or in cases where this is necessary in order to ensure that the constitutional rights and freedoms of a person are protected and justice is administered, since the non-disclosure of the source of information could cause much graver effects than its disclosure. If the aforementioned legal regulation were established, the balance among the values protected by the Constitution, the constitutional imperative of an open and harmonious civil society, as well as the constitutional principle of a state under the rule of law, would be violated.

It needs to be noted that, after the right of a journalist to preserve the secret of the source of information and not to disclose the source of information is consolidated, in cases where the question arises whether the source of information should be disclosed, it must be assessed in every particular case whether the non-disclosure of the source of information would violate the values protected under the Constitution. In a democratic state under the rule of law, the solving of such questions is within the competence of courts. The constitutional principle of judicial protection is universal (ruling of 2 July 2002).

Thus, the legislature, when establishing the right of a journalist to preserve the secret of the source of information and not to disclose the source of information, also has the duty to stipulate in a law that, in every particular case, it is only a court that can decide whether a journalist must disclose the source of information. When establishing such powers of a court, the legislature is bound by the concept of freedom of the media, under which it is permitted to demand that the source of information be disclosed only where this is necessary in order to ensure the vitally important or other especially significant interests of society and in order to ensure that the constitutional rights and freedoms of persons are protected and justice is administered, i.e. only where this is necessary in order to disclose the source of information due to a more important interest protected under the Constitution. Thus, it is not necessary to disclose the source of information if a court decides that the interest to disclose the source of information is not more important

than the interest not to disclose the source of information. In cases where the source of information is disclosed, a court, while taking account of the circumstances of the case, may adopt a decision on limiting disclosed information that may be made known to the public. Thus, by establishing the powers of a court to decide whether or not the source of information must be disclosed, the legislature may not deny the duty of a court, which follows from the Constitution, in the course of deciding the issue of the disclosure of the source of information, to assess, in every particular case, whether it is required to disclose the source of information specifically for ensuring the vitally important or other especially significant interests of society, as well as with a view to ensuring that the constitutional rights and freedoms of a person are protected and justice is administered.

It also needs to be noted that the legislature, when establishing, by means of a law, the powers of a court to decide the issue of the disclosure of the source of information, has the duty to establish such a legal regulation whereby a court may decide whether a journalist must disclose the source of information only in cases where all other means of the disclosure of the source of information have been exhausted.

The *raison d'être* of a public broadcaster is to ensure the interest of the public to be informed

The Constitutional Court's ruling of 21 December 2006

The *raison d'être* of a public broadcaster is to ensure the public interest – the interest of the public to be informed, which is consolidated, protected, and defended by the Constitution. The concept of all radio and television broadcasters, including that of a public broadcaster, is closely related to the public interest, i.e. the interest of the public to be informed, as well as to freedom of information and the constitutional concept of fair competition.

The prohibition on monopolising the media; the constitutional principle of the variety of the sources of public information

The Constitutional Court's ruling of 21 December 2006

Information and ideas can be imparted by means of various mass media, *inter alia*, the press, the internet, radio, or television. From the standpoint of imparting information and ideas, the fact as to who has founded certain mass media or who their owner is, or who renders the respective public services, i.e. whether this is done by the state or private natural or legal persons, is of no essential importance. However, it needs to be noted that the Constitution does not tolerate any such a situation where the need of the public to be informed would be satisfied by using only one means of the mass media, since this would mean the monopolisation of the mass media, which is explicitly prohibited by the Constitution. ... under Paragraph 2 of Article 44 of the Constitution, the state, political parties, political or public organisations, or other institutions or persons may not monopolise the mass media. This constitutional provision (which should be interpreted in the context of the prohibition on monopolising the market, which is consolidated in Paragraph 4 of Article 46 of the Constitution) must be applied not only to the state (its institutions), but also to all other persons. Thus, the legislature is under the constitutional obligation to establish, by means of a law, a legal regulation that would prevent the monopolisation of the mass media so that no monopolisation tendencies would become prevalent in the mass media market and in the space of public information.

On the other hand, when establishing the said legal regulation, the legislature must seek to attain a balance among the values consolidated, defended, and protected by the Constitution and it may not violate, *inter alia*, the right of private ownership and freedom of individual economic activity and initiative, which are consolidated in Paragraph 1 of Article 46 of the Constitution. In this context, it needs to be held that the provisions of Article 25 of the Constitution, if interpreted together with the provisions of Paragraph 1 of Article 46 of the Constitution and other provisions of the Constitution, also express the constitutional principle of the variety of sources of public information. All this in itself implies that, if regard is paid to the Constitution, a large part of the mass media market will always be held by private persons and a great part of public information will comprise information imparted through the private mass media.

Regulating the relationships connected with the functioning of the audio-visual sector of the mass media and the electronic mass media

The Constitutional Court's ruling of 21 December 2006

... as the Constitutional Court has held, freedom of the mass media also implies freedom of the electronic mass media (ruling of 19 September 2005). When the relationships linked with the functioning of the audio-visual sector and with that of the electronic mass media (and with electronic communications in general) are regulated by means of legal acts, account should be taken, on the one hand, of an especially considerable impact on the public by such mass media, especially by radio and television, and, on the other hand, of the fact that the functioning of such mass media was and, to a certain extent, is linked with the use of limited resources, such as electronic communication channels (radio frequencies), which belong to the state by right of ownership. In this context, it needs to be emphasised that, as the Constitutional Court has held, higher requirements are placed on radio and television compared with other types of the mass media because of the especially great influence of radio and television on a broad audience, as well as because the technical possibilities of radio and television broadcasting are not unlimited (ruling of 20 April 1995).

From the standpoint of an open, just, and harmonious civil society, the striving for which is proclaimed in the Preamble to the Constitution, any tendencies towards the monopolisation of the audio-visual sector of the mass media, *inter alia*, radio and television, as well as of the electronic mass media, may not be tolerated. As the Constitutional Court held in its ruling of 20 April 1995, the prohibition consolidated in Paragraph 2 of Article 44 of the Constitution, "first and foremost, means the prohibition on the monopolisation of the production of radio and television programmes, as well as of the imparting of information". This prohibition ... should also be applied to the state (its institutions) and all other persons.

Consequently, under the Constitution, the broadcasting of radio and television programmes cannot be left to the state only, nor can it be entrusted to one legal or natural person or few persons, who would be able to monopolise the audio-visual sector or part thereof. The Constitution implies that various broadcasters must operate in the radio and television broadcasting services market.

It also needs to be noted that, if only the broadcaster founded by the state or only a private broadcaster became overly prevalent in the audio-visual sector, this would create the preconditions for violating the values consolidated in Article 25 of the Constitution and for overstepping the limits of constitutional freedom of information, which is laid down in this article (Paragraph 4 thereof). Any overly distinctive dominance of a broadcaster founded by the state or such dominance of a private broadcaster in the audio-visual sector would also violate the principle of the variety of sources of public information, which arises from the Constitution. The legislature has the constitutional duty to establish such a legal regulation and such limitations that the said tendencies (towards monopolisation or towards overly distinctive dominance) would not become prevalent. In doing so, the legislature has broad discretion to choose various means of limitation as, for instance, the prohibition precluding a certain natural or legal person, who is acting alone or together with others, from owning a certain part of the capital, territory, or audience of a media outlet, a limitation on the number of licences granting the right to broadcast radio or television programmes, a limitation on the size of the market of electronic communication channels (radio frequencies) (which is applied to a person individually or together with other persons, as well as to other media outlets), etc.

Making use of freedom of information and its implementation by means of the mass media should be related to special obligations and responsibility. The specific nature of radio and television as a means of the mass media increases this responsibility even more. As mentioned before, higher requirements are placed on radio and television compared with other types of the mass media.

The duty of the state to impart to the public through the mass media the information related to fostering constitutional values and implementing constitutional principles; the possibilities of the state to entrust private broadcasters with the task of imparting such information (providing public broadcasting services)

The Constitutional Court's ruling of 21 December 2006

The information that the state (its institutions) is constitutionally obligated to impart to citizens through the mass media, *inter alia*, through radio and television, is linked with fostering various values consolidated, protected, and defended by the Constitution and with implementing various principles of the Constitution. Imparting such information is aimed to attain socially and constitutionally important objectives, i.e. to ensure the protection of national interests (*inter alia*, national security), to strengthen democracy, to promote civic consciousness, respect for law, the openness of society, and tolerance, to foster language and culture, etc. For instance, in its ruling of 8 July 2005, the Constitutional Court held that the state is constitutionally obligated to support and foster culture as a national value of universal importance – the material and spiritual creative activity and its results that should be passed on to future generations; according to the Constitution, the state must, by its positive decisions (*inter alia*, a legal regulation), encourage and support, by using state funds and other resources, the creation, dissemination, propagation, and preservation of material and spiritual cultural values; freedom of access to culturally valuable objects is consolidated in the Constitution; the said freedom is also related to the imperative of an open society, which is also consolidated in the Constitution: if this freedom is not ensured, the striving for an open society would also be harmed.

Imparting such information that is linked with fostering various values consolidated, defended, and protected by the Constitution and with implementing various principles of the Constitution to the public is a necessary condition for the proper fulfilment of various state functions.

It needs to be noted that the state may choose various ways of imparting the said information through radio and television, i.e. rendering the respective public services to the public by using various means. It can do so not only through a broadcaster founded by the state, but also through private radio and television broadcasters; it can entrust various radio and television broadcasters with broadcasting (in compliance with the respective requirements) certain public radio and television programmes. In this context, it should be mentioned that, as it has been held by the Constitutional Court, the state may carry out its functions to a certain extent through establishments other than state institutions, which are assigned (entrusted) according to laws with carrying out particular state functions or participate in fulfilling state functions in the particular forms and manner defined in laws (ruling of 13 December 2004). Thus, the state can also guarantee the interest of the public to be informed by entrusting (tendering) the dissemination of public programmes to those radio and television broadcasters that would ensure the implementation of the said interest of the public in the most effective manner.

Under the Constitution, the state may establish, by means of a law, also certain requirements for the programmes of radio and television broadcasters (including private ones), *inter alia*, that a certain part of their programmes must be composed of broadcasts corresponding to the content of public programmes; by establishing compensation criteria in advance, it can also encourage private broadcasters to broadcast public radio and television programmes, provided that such programmes meet the specified conditions.

At the same time, the state (its institutions) has (have) the duty to supervise whether the programmes and broadcasts transmitted by radio and television broadcasters (including private ones) violate the constitutional principle of the equality of the rights of persons, human dignity, as well as the rights, freedoms, and legitimate interests of persons. Besides, the state (institutions empowered by it) has (have) the duty to control the use of electronic communication channels (radio frequencies) assigned to radio and television broadcasters, as well as the lawfulness and transparency of financing all radio and television broadcasters (including the sources of financing), and to regulate the conditions of how broadcasters access the market, the concentration of the market within the country and concentration together with foreign investors, etc.

On the other hand, the state regulation of the activity of private radio and television broadcasters may not overstep certain limits established in the Constitution, *inter alia*, it is not permitted to violate the protection of private ownership, to constitutionally unreasonably restrict freedom of individual economic activity and initiative, or to introduce censorship.

Therefore, it needs to be noted that the possibilities of the state to entrust private broadcasters with imparting information that is linked with fostering various values consolidated, protected, and defended by

the Constitution and with implementing various principles of the Constitution, as well as with rendering the respective public services to society, are limited ones, since private (commercial) broadcasters come into being not in order, on their own initiative, to contribute to the fulfilment of the respective state functions (rendering public broadcasting services), but because radio and television broadcasting, where it is carried out by private (commercial) broadcasters, is an economic activity aimed at gaining profit; meanwhile, the public information that the state is constitutionally obligated to impart (although such information is linked with fostering various values consolidated, protected, and defended by the Constitution and with implementing various principles of the Constitution) is often not such information the imparting of which would be profitable for the broadcaster – it is imparted in order to satisfy the public interest, but not in order to gain profit.

The possibilities of the state to entrust private broadcasters with imparting information linked with fostering various values consolidated, protected, and defended by the Constitution and with implementing various principles of the Constitution, as well as with rendering the respective public services to society, are also limited because of the fact that there are very limited possibilities of controlling the structure of programmes, let alone influencing their content, without violating the independence of private broadcasters.

A public radio and television broadcaster (its constitutional mission and functions, as well as constitutional requirements for the activity of a public broadcaster)

The Constitutional Court's ruling of 21 December 2006

Experience in other states shows that, as a rule, states need to have at least one public radio and television broadcaster (which is, as a rule, founded by the state itself); a special subject – a public broadcaster that is established and operates on the grounds other than private (commercial) broadcasters – is *volens nolens* entrusted with broadcasting ... socially and constitutionally important information to the public.

The fact that the Constitution does not employ the notion “public broadcaster” does not mean that no requirements arise for a public broadcaster from the Constitution, which are determined by the particularities of a public broadcaster in comparison with other – private (commercial) – broadcasters. Quite to the contrary, the duty of the state (its institutions) to impart to the public through the mass media (*inter alia*, through radio and television) information that is related to fostering various values consolidated, protected, and defended by the Constitution and to implementing various principles of the Constitution, as well as the fact that the possibilities of the state to entrust private broadcasters with imparting such information and rendering the respective public services to society are limited, implies the constitutional necessity to found a public radio and television broadcaster and to regulate the relationships related to its activity in order that the said duty of the state would be properly fulfilled.

... the *raison d'être* of a public broadcaster is to ensure the public interest – the interest of the public to be informed, which is consolidated, protected, and defended by the Constitution. This implies a special mission of a public broadcaster.

The mission and functions of a public broadcaster stem from various norms and principles of the Constitution, as well as from the values consolidated in the Constitution. This implies that a national public broadcaster must be established and that it must provide the respective public services in order that these services would cover all society and help ensure national interests and that such services would be designated for the education of civil society and the fostering of culture. On the other hand, this does not deny the fact that, along with the national public broadcaster, there could be other public broadcasters that operate not at the state level (but, for example, at the regional level) and whose mission may have certain particularities determined by the specificity of the audience of their listeners and/or viewers.

It needs to be especially emphasised that a public broadcaster, while carrying out its constitutional mission, has important functions in contributing to the implementation of the sovereignty of the Nation and the principles of democracy, as well as in ensuring the security of society and the state, public order, the welfare of citizens, and their rights and freedoms. In addition, an important role falls on a public broadcaster

where the state fulfils its constitutional obligation to support culture and science, to take care of the protection of Lithuanian historical, artistic, and cultural monuments, as well as other culturally valuable objects.

The activity of a public broadcaster must be organised in such a way that state institutions could have a real possibility of imparting certain information through that public broadcaster. For instance, a law must consolidate the duty of a public broadcaster to promptly announce official reports about emergency situations (natural or other disasters, etc.), as well as information about other important events in this country and those from abroad, *inter alia*, events that could (either directly or indirectly) cause negative effects to Lithuanian society and/or the state itself. A public broadcaster must also give air-time for urgent messages in other special cases, *inter alia*, when high state officials and the heads of institutions so request. The principle of democracy enshrined in the Constitution implies, *inter alia*, that a law must establish such a legal regulation whereby, at the time of election campaigns, a public broadcaster gives air-time to political parties and political organisations, also candidates for the Seimas, for the European Parliament, for the post of the President of the Republic, and for municipal councils, that participate in the respective election; the constitutional principles of justice and the equality of the rights of persons imply that the persons of the same categories should be given equal air-time, unless such allocation of equal air-time and the observance of the criterion of arithmetical proportionality would hinder the implementation of certain socially and constitutionally important objectives.

Besides, the constitutional freedom of associations and the constitutional provisions that the state recognises the churches and religious organisations that are traditional in Lithuania and that churches and religious organisations are free to proclaim their teaching imply that a law may (and, under certain circumstances, must), without violating the constitutional secularism and world-view neutrality of the State of Lithuania, as well as the separation of the state and the church, establish the duty for a public broadcaster to give some air-time to public organisations and the churches recognised by the state, thus ensuring the self-expression possibilities of the members of these organisations and communities and diminishing the threat that they would not be heard at all. At the same time, it needs to be noted that it is not permitted to abuse political, religious, or other expression by any persons in programmes and broadcasts of a public broadcaster; it is not permitted that such expression would violate the constitutional right of other people to have their own convictions and freely express them, since, under the Constitution, “no views or ideology may be declared mandatory and thrust on an individual, i.e. a person who freely forms and expresses his/her own views and is a member of an open, democratic, and civil society” (ruling of 13 June 2000).

In its ruling of 20 April 1995, the Constitutional Court held that “the publisher is responsible for imparted information; therefore, the requirements or instructions of the publisher or the editor concerning the content of information, as well as decisions in regard to the possibility of its imparting, etc., are not considered to be censorship”. This official constitutional doctrinal provision is applicable to all radio and television broadcasts, including those made by a public broadcaster. In addition, the official constitutional doctrinal provision that state institutions and officials have the duty to respect human dignity as a special value (ruling of 29 December 2004) and the constitutional imperatives regarding the inviolability of the right to private life and the protection of private life are also applicable to a public broadcaster. Therefore, a public broadcaster must refuse to broadcast programmes or broadcasts in which opponents or other persons are insulted or otherwise humiliated, in which any people are discriminated on the basis of their gender, race, nationality, language, origin, social status, belief, convictions, or views, or in which human dignity is otherwise violated and a public broadcaster must not permit persons who do so to participate in its programmes or broadcasts. The legislature has the duty to consolidate the right to react, which could be effectively used, while denying untrue information (facts), by individuals about whom disinformation was imparted (which could also violate their dignity) in the programmes or broadcasts of a public broadcaster (or other broadcasters).

It has been mentioned that an important role falls on a public broadcaster where the state fulfils its constitutional obligation to support culture and science and to take care of the protection of Lithuanian historical, artistic, and cultural monuments, as well as other culturally valuable objects. This implies that a

public broadcaster must allocate proper air-time for programmes and broadcasts designated for culture, *inter alia*, science, art, other areas of spiritual life and creation, the material and spiritual heritage of society, as well as for programmes and broadcasts promoting Lithuanian culture beyond the boundaries of Lithuania. The programmes and broadcasts of a public broadcaster must reflect the variety of Lithuanian culture, without excluding the cultural life and cultural heritage of Lithuanians who reside abroad. In this context, it should be mentioned that, as held by the Constitutional Court, “the state support and development of culture as a constitutionally protected and defended value would be impossible if culture were not developed in regions, separate parts of the territory of the state, and separate self-governing territorial communities, which form part of the whole national community – the civil Nation” (ruling of 8 July 2005).

It should also be emphasised that a public broadcaster has an especially important role in fostering the culture of the language in public life, as well as in consolidating respect for the Lithuanian language – a constitutional value and in ensuring its survival, spread, and consistent development.

A public broadcaster may foster culture by choosing various genres of broadcasts: information, education, entertainment, also including broadcasts of light content. In this context, it needs to be noted that the Constitution also gives rise to no prohibition whatsoever precluding a public broadcaster from broadcasting entertainment broadcasts if they have cognitive, educational, or other cultural value, especially if such broadcasts can connect different social groups from the cultural standpoint. It is important that the broadcasts of a public broadcaster designated for culture, no matter to what genre they belong or to what audience they are intended, must always be quality broadcasts. No consumerist interest of any social group, *inter alia*, that denying the cultural identity of Lithuania, may have any impact on the broadcasts of a public broadcaster.

Summing up, it needs to be held that it is the very nature and mission of a public broadcaster that makes it different from private (commercial) radio and television broadcasters – the broadcasting of programmes and broadcasts by a public broadcaster must be the rendering of public services, i.e. the rendering of services to the public, since public services must satisfy the public interest; thus, such public services must be of a public nature. In this respect, a public broadcaster expresses the public interest. Consequently, a public broadcaster must always remain independent of any particular – private or group – interests (political, economic, or other interests).

In a pluralistic democracy (Lithuania, under the Constitution, is a pluralistic democracy), the activity of a public broadcaster must be based on objectiveness, impartiality, and justice and it may not depend on any party or other political preferences. The activity of a public broadcaster must bring society together, but not divide it. In programmes broadcast by this broadcaster, various views must be represented, universal human values verified by the civilisation and time must be propagated, the entire variety of life of society and the state, as well as the variety of cultures, must be reflected, and various topics and issues, *inter alia*, such that are designated for people with special needs, whose socialisation and integration into society is more difficult than that of other people (e.g. people with disabilities), must be discussed. An important part of the mission of a public broadcaster, which arises from the Constitution, is to ensure that the imparting of the information broadcast by it would help to increase social capital, to decrease social exclusion and to increase social solidarity, to strengthen constitutionally valuable social ties, civic consciousness, and an open, just, and harmonious civil society, to help society to perceive itself as the national community – the civil Nation, to increase the creative potential of society, to promote civilisation, ecological awareness, to foster the culture of society, the cultural affinity and cultural continuity of the Nation, as well as human self-expression, and to promote the rational solution of social and state issues.

It is due to this that a public broadcaster may and, in view of the fact that the state possibilities of entrusting the rendering of public broadcasting services to private broadcasters are limited, even must be assigned to render all or most of public radio and television services.

The independence of a public broadcaster

The Constitutional Court's ruling of 21 December 2006

The constitutional mission of a public broadcaster also implies that material, organisational, and financial conditions must be created in order that such a public broadcaster would successfully accomplish its mission, that a legal regulation established by means of a law would guarantee the independence of a public broadcaster from the interference of state institutions, officials, and other persons with the activity of the said broadcaster. This is a *conditio sine qua non* in order that a public broadcaster could carry out its mission.

In this context, it needs to be noted that, in itself, the fact that the state is the founder of a public broadcaster does not mean that the imperative of the independence of a public broadcaster is deviated from.

It needs to be emphasised that a law must establish such a model of the management of a public broadcaster that would ensure that the constitutional mission of the said broadcaster will not be deviated from and the independence of the said broadcaster will not be denied.

In itself, the fact that certain state institutions provided for in a law may participate in the formation of the highest institution of a public broadcaster, where the said highest institution has the powers to decide the most important issues of the activity of the public broadcaster as, for example, to plan the strategy of the activity of the public broadcaster, to establish requirements for programmes and broadcasts, etc. (this highest institution may be named in a varied manner: a council, a board, etc.), as well as in the formation of the institutions supervising the activity of the public broadcaster, cannot be considered a deviation from the above-mentioned imperative of independence. In itself, such participation of the state institutions that are provided for in a law in the formation of the said institutions of the national public broadcaster does not mean that the state interferes with the activity of the national public broadcaster.

However, it needs to be emphasised that a public broadcaster founded by the state may reasonably be regarded as a public broadcaster only when the institution that has the powers to decide the most important issues of the activity of the public broadcaster is composed not of state officials or state servants, but of persons who could reasonably be called representatives of all society, but not of some interest groups (also professional and institutionalised groups, *inter alia*, those linked with the mass media, with radio and television in particular, as well as groups uniting persons whose creative work or production could be promoted by the public broadcaster). They must express precisely the interests of all society. These persons must represent the widest possible social spectrum. The procedure for the election or appointment of the highest institution that has the powers to decide the most important issues of the activity of a public broadcaster must be public and transparent.

The activity of a public broadcaster may not be focused only on commercial success, because it has the duty to inform and educate society

The Constitutional Court's ruling of 21 December 2006

The transmission of programmes and broadcasts is a certain technical process. In this respect, it is absolutely of no importance whether programmes or broadcasts are broadcast by a public broadcaster or private (commercial) broadcasters – the nature of this technical process and of the activity related to it does not become different because of this. ... both when programmes or broadcasts are broadcast by a public broadcaster and when this is done by private (commercial) broadcasters, the features of broadcasting and of the activity related to it are, from the aspect at issue, virtually the same regardless of who is broadcasting and to whom the broadcast is meant, regardless of what is broadcast (informational, educational, sport, or entertainment broadcasts, films, concerts, trailers, ads, etc.), and regardless of whether particular programmes are broadcast upon someone's commission (*inter alia*, for commercial purposes) or on the initiative of the broadcaster itself in the absence of any ordering customer. In addition, the activity of some broadcasters always has impact on the activity of other broadcasters (especially, on the activity of the same nature and, indirectly, on the activity that is of a different character), as well as on economic and commercial activity. Thus, as participants in the audio-visual sector, all radio and television broadcasters,

whatever they broadcast (i.e. it is not important whether or not the broadcasting services rendered by them are designated for satisfying the public interest and, consequently, it is not important whether or not such services are of a public character), inevitably compete for the audience of listeners and viewers. The same can be said about a public broadcaster, which, as regards this competition field, is not somewhere “apart”, since every consumer of television or radio services always, at any concrete moment, chooses one over another radio or television broadcaster (i.e. a broadcast or programme transmitted by it); thus, having chosen to listen to or to watch, for example, a programme or broadcast which is being broadcast by a public broadcaster, he/she also chooses not to watch or not to listen to the programmes or broadcasts that are being broadcast by private (commercial) broadcasters and vice versa. In this way, every consumer of television or radio services (listener or viewer) himself/herself defines his/her position in regard to radio and television broadcasters, which inevitably compete with other broadcasters for the audience of listeners and viewers.

However, it must be specially emphasised that a public broadcaster, in view of its special constitutional mission, is not established for the purpose of taking the market (or part thereof) and consolidating its market position; in this regard, it substantially differs from private (commercial) broadcasters. The mission of a public broadcaster is different – it is the mission of a non-participant in the market. A public broadcaster, as a provider of public services related to the interest of the public to be informed (this interest arises from the Constitution), is not designated for the market (although, in certain cases, specifically whenever it broadcasts advertising, it operates in the market); therefore, the purpose of a public broadcaster may not be a mere striving for a broader audience of listeners or viewers or the satisfaction of consumerist needs. Quite to the contrary, a public broadcaster, without representing any interest group, must render public radio and television services to all society and not only to its founder, i.e. the state. The programmes and broadcasts of a public broadcaster must be prepared and imparted not because of their economic profit, but because certain information is necessary for citizens (and other residents) so that citizens could participate in the adoption of decisions of state importance and people could participate in the adoption of other decisions related to the management of public affairs, as well as decisions related to the implementation of their rights and freedoms.

Thus, the activity of a public broadcaster may not be commercialised, its programmes and broadcasts should not be oriented to attracting the largest possible audience or to commercial success. A public broadcaster must not adapt to the situation in the audience or the market, it must not flatter consumerist tastes, but must inform and educate society, implant such civil and cultural attitudes in the public that are dictated to a public broadcaster by its constitutional mission. If this requirement were deviated from, not only the constitutional mission of a public broadcaster would be harmed, but also the *raison d'être* of a public broadcaster would be denied.

[...]

... a public broadcaster is not designated for the market (although, whenever it broadcasts advertising, it operates in the market) and ... the programmes and broadcasts of a public broadcaster must be prepared and imparted not because of their economic profit. However, this does not mean that it is permissible to arrange the activity of a public broadcaster in such a manner that its administration would not be interested in the “feedback”, i.e. what the rating of the programmes and broadcasts of the public broadcaster is and what response is evoked by the programmes and broadcasts of the public broadcaster within the audience of radio listeners and television viewers. Nor does this mean that the activity of a public broadcaster may not bring profit (where the radio and television market grants such possibilities provided that account is taken of the content and quality of concrete programmes and broadcasts) or that this activity may be unprofitable, let alone that, as a rule, the funds of all taxpayers are allocated in order to finance such activity.

A public broadcaster is subject to the highest requirements of mass media ethics

The Constitutional Court's ruling of 21 December 2006

... higher requirements are placed on radio and television compared with other types of the mass media ... the specific nature of radio and television as a means of mass media increases the responsibility of a broadcaster even more. This is especially apparent in the case of a public broadcaster. A public

broadcaster (its programmes and broadcasts) must be subject to the highest requirements of mass media ethics. For example, imparting any disinformation (which, as mentioned before, is not covered by the constitutional concept of freedom of information) is absolutely prohibited in programmes and broadcasts of a public broadcaster (as well as in those of other broadcasters). In a state under the rule of law (i.e. in a state where human rights and freedoms are respected, protected, and defended), there may not be any such a legal regulation whereby a public broadcaster (as well as other broadcasters) would not be responsible if, due to its unlawful action or its failure to act, human dignity and the right to the inviolability of private life are infringed in its programmes or broadcasts or if, in its programmes or broadcasts, such thoughts, views, and other information are disseminated by which national, racial, or social hatred, as well as violence or discrimination, are incited, persons are defamed, or society and its individual members are disinformed otherwise, or if criminal actions are incited. Under the Constitution, a public broadcaster must ensure that freedom of information is not abused.

The duty of the state to create financial conditions for the activity of a public broadcaster; the possibilities of financing a public broadcaster from funds received for broadcast advertising; the possibilities and conditions of limiting or prohibiting advertising broadcast on the radio and television

The Constitutional Court's ruling of 21 December 2006

... material, organisational, and financial conditions must be created in order that a public broadcaster could successfully accomplish its mission. Thus, the nature and constitutional mission of a public broadcaster also imply not only the state obligation to found a public broadcaster, but also the duty to ensure the activity of the public broadcaster, *inter alia*, the duty to allocate proper financing to the public broadcaster so that it could carry out the said mission and render particular public broadcasting services. In this context, it needs to be mentioned that, as it was held by the Constitutional Court, the imperative of just society and social harmony, which is consolidated in the Constitution, implies that, when supporting culture (*inter alia*, creative activity), regard must be paid to the resources and the material and financial possibilities of the state and society, as well as other important factors, *inter alia*, expediency (ruling of 8 July 2005).

[...]

Under the Constitution, the legislature has broad discretion to choose the financing model of the national public broadcaster – the Lithuanian National Radio and Television [*Lietuvos nacionalinis radijas ir televizija*, hereinafter referred to as the LRT]. When doing so, the legislature must pay regard to the Constitution.

[...]

... state financial support for the national public broadcaster, which is allowed to broadcast advertising under the law, should not overstep the limits of reasonableness and fairness. In this area, regard must be paid to the relevant provisions of European (*inter alia*, EU) law.

It needs to be emphasised that the choice for a model of financing the national public broadcaster is a matter of social, political, and economic expediency, which is within the competence of the legislature. Under the Constitution, the legislature has the discretion to choose the model of financing the national public broadcaster by taking account of the resources and the material and financial possibilities of the state and society and by paying regard to other important factors, *inter alia*, expediency. When doing so, the legislature may not violate any norms and principles of the Constitution.

[...]

... upon founding the national public broadcaster, the Seimas, under the Constitution, has to establish such a legal regulation that would ensure that this broadcaster would have sufficient funds for carrying out its special constitutional mission. However, this does not mean that all such funds must necessarily be provided for in the state budget and allocated from it; other sources of financing the national public broadcaster may also be provided for.

[...]

Although ... a public broadcaster, as a provider of public services related to the interest of the public to be informed (this interest derives from the Constitution), is not designated for the market and ... the programmes and broadcasts of a public broadcaster must be prepared and imparted not because of their economic profit, however, the activity of a public broadcaster (especially that of the national public broadcaster) and competition with private (commercial) broadcasters for the audience of listeners and viewers have influence on the economic and commercial activity of these other broadcasters; whereas, when broadcasting advertising, a public broadcaster is a participant in particular (advertising) competitive relationships.

... the legislature, when implementing its discretion stemming from the Constitution to establish such a differentiated legal regulation governing the relationships linked with advertising that meets best the expediency reasons at a given time, must simultaneously ensure the public interest so that the activity of a public broadcaster would be efficient and its special constitutional mission would be carried out and may regulate the respective relationships by means of a law also in a manner that advertising is permitted in the programmes and broadcasts of the national public broadcaster or may establish limitations on advertising.

In its ruling of 8 July 2005, the Constitutional Court held that “the constitutional duty of the legislature to establish such a legal regulation under which funding for municipal functions would be guaranteed where account is taken of the resources and material and financial capacity of the state and society, as well as other important factors, does not deny the duty of municipalities (their institutions or officials) to adopt the respective decisions within the competence defined by the Constitution or laws so that the funds needed for performing their functions would be collected and these funds would be used in a proper manner” and that “the aforesaid constitutional duty of the legislature does not deny the responsibility of municipalities (their institutions or officials) for the proper performance of the functions transferred to them”.

The cited constitutional doctrinal provisions are *mutatis mutandis* applicable not only to self-government (municipal) institutions, but also to all institutions established by the state – establishments, enterprises, and organisations (their officials), unless the independent collection of funds, the receipt of support, etc. would be in conflict with the purpose of a particular institution and the nature of its activities, would hinder the proper performance of its functions, and would raise doubts as to decisions adopted by this institution (its officials) (with regard to independence, impartiality, transparency, the absence of a conflict of interests or in other respects).

... the LRT as the national public broadcaster is not such an institution founded by the state to which this reservation could be applied *a priori*.

It needs to be specially emphasised that the Constitution does not tolerate any such insufficient financing of the national public broadcaster (as well as any other public broadcaster) (i.e. which is not sufficient in order to carry out its constitutional mission) from the state budget (or decreasing such financing) when, by this, an attempt is made (or could be made) to violate its independence and, thus, to exert influence on the programmes and broadcasts that are broadcast by the national public broadcaster.

... one of the sources of financing the national public broadcaster (which is often employed in various states) is the means received by this broadcaster from broadcast advertising (*inter alia*, commercial advertising).

If such a model of financing the national public broadcaster is chosen whereby it also receives funds from broadcast advertising, regard must be paid to, *inter alia*, the provisions of Articles 29 and 46 of the Constitution ...

However, it needs to be emphasised that there are not any constitutional arguments that would allow asserting *a priori* that the LRT, as the national public broadcaster, may not, in general, broadcast advertising (either commercial or any other) or that it may not receive funds from broadcast advertising (either commercial or any other), as well as funds from prepared and/or broadcast non-advertising content broadcasts, from other ordering customers, or that such a legal regulation that consolidates the possibility for the LRT to broadcast advertising and to receive funds from it in itself violates the constitutional clause

of fair competition, the constitutional principle of the equality of the rights of persons, and other provisions of the Constitution.

It needs to be noted that limitations on advertising (including commercial advertising) in programmes and broadcasts of a public broadcaster is a matter of legislation, but not that of constitutional review, unless these limitations would obviously deny certain constitutional values and would be harmful for all society; in such cases, their compliance with the Constitution could be assessed.

[...]

... the legislature may also establish such a legal regulation that would limit the broadcasting of advertising in the programmes and broadcasts of the LRT as the national public broadcaster (and other radio and television broadcasters). For example, it is permitted to establish limitations and/or prohibitions on the length and occurrence of advertising, prohibitions on broadcasting advertising on certain days or at a certain time of the day, prohibitions on advertising certain goods or services, prohibitions on broadcasting advertising in certain programmes or broadcasts (in relation to their content or according to the audience), prohibitions on broadcasting political advertising, etc.

The legislature may even, by means of a law, prohibit broadcasting advertising on the national radio and television at all (although this is a rare case in the world), but only if the resources and financial possibilities of society can afford it and if this does not impair the constitutional mission of the national public broadcaster. In addition, in such a special situation, the legislature must ensure the proper financing of the LRT as the national public broadcaster in other ways, for example, by means of the so-called subscription fee (levy), especially if a complete ban on advertising broadcasting can prevent this broadcaster from carrying out its constitutional mission. Otherwise, this would create the preconditions for violating the interest of the public to be informed, which is consolidated, defended, and protected by the Constitution; in addition, certain constitutional values might be denied for the implementation, fostering, and protection of which the institution of a public broadcaster is meant.

On the other hand, if such a model of financing the LRT as the national public broadcaster is chosen whereby the LRT also receives funds from broadcast advertising, when account is taken of the special constitutional mission of the national public broadcaster and its situation in the audio-visual sector, any legal regulation of the relationships linked with the financing and activities of this broadcaster whereby the LRT would be allocated only funds received from advertising or most of the funds received from advertising would be constitutionally groundless. Thus, this might create the preconditions for the LRT to become dependent and vulnerable, since the carrying out of the constitutional mission of the public broadcaster (for which finance is necessary) would depend on the situation in the audience or the market or on improper interest group or political influence, or it might become commercialised, or its programmes and broadcasts might be oriented only to the attraction of the largest possible audience, to commercial success, and to flattering consumerist tastes, but not to the public interest. Such broadcasts and programmes would not inform or educate society or implant such civil and cultural attitudes in the public that are dictated to the public broadcaster by its constitutional mission, and a threat might even appear that the special constitutional mission of the national public broadcaster would be denied at all.

[...]

... the autonomy of the LRT when it broadcasts advertising (*inter alia*, commercial advertising) is one of the aspects of the independence of the LRT as the national public broadcaster from interference by state institutions, officials, and other persons with the LRT activity; such independence must be ensured in order that this broadcaster would carry out its special constitutional mission.

Control over the activity of a public broadcaster

The Constitutional Court's ruling of 21 December 2006

... a law must establish not only such a model of the management of the national public broadcaster that would ensure that the constitutional mission of this broadcaster will not be deviated from and that the

independence of the national public broadcaster will not be denied, but also the respective model of control over this broadcaster.

Such control over the activity of the national public broadcaster must be comprehensive; it may not be just formal. Such control may not be exercised by persons who themselves are related to the national public broadcaster by official, property, or financial links or are dependent on it in one way or another, or who themselves have interests related to the activity of the national public broadcaster, or who belong to the interest groups (also institutionalised ones) that have precisely such interests.

The aforementioned control over the national public broadcaster includes, among other things, a financial and property audit, which is a very important part of this control. *Inter alia*, control must be exercised over whether the national public broadcaster abuses its special legal status and the possibilities granted by this status (also those that are granted in the radio and television services market), whether the constitutional imperatives of fair competition are deviated from in its activity, and whether the funds that are allocated (not exclusively from the state budget) to the national public broadcaster so that it could carry out its special constitutional mission are used precisely for this purpose.

However, control over the activity of the national public broadcaster may not be understood solely as a financial or property audit. Such control must also include (both *a priori* (preliminary) and *a posteriori* (successive)) control over the direction in the content and structure of the programmes and broadcasts of the national public broadcaster, i.e. such monitoring and checking where the programmes and broadcasts of the national public broadcaster are also assessed from the aspect of the mission of this broadcaster, which arises from the Constitution and is defined in laws.

It needs to be emphasised that such control may not become censorship of the programmes and broadcasts of the national public broadcaster, which, as censorship of any other mass media, is *expressis verbis* prohibited by the Constitution.

The duty of the state to take effective measures against the dissemination of information that incites national, racial, religious, or social hatred, violence, or discrimination or spreads defamation, also against disinformation and against war propaganda

The Constitutional Court's ruling of 16 May 2019

... the Constitution, *inter alia*, Paragraph 4 of Article 25 and Paragraph 2 of Article 135 thereof, gives rise to the duty of the state to take effective measures against the dissemination of information that incites national, racial, religious, or social hatred, violence, or discrimination or spreads defamation, as well as against disinformation (in particular, against the dissemination of organised false or misleading information in order to manipulate the public, thus inflicting damage on the values protected and defended under the Constitution) and against war propaganda (especially, against incitement to aggression in the area of international relationships).

The constitutional mission of the national public broadcaster

The Constitutional Court's ruling of 16 May 2019

... the Constitution, *inter alia*, Article 25 thereof, gives rise to the mission of the national public broadcaster to ensure the public interest – the interest of society to be properly informed (which is consolidated, protected, and defended by the Constitution), i.e. to impart information to society at the national level by fostering the constitutional and common human values, *inter alia*, by protecting the national interests, strengthening democracy, cultivating civic consciousness, building respect for law, developing the openness and tolerance of society, fostering the language and culture, and preventing disinformation; the activity of the national public broadcaster in implementing this mission must be based on the principles of, *inter alia*, a pluralistic democracy, objectivity, impartiality, respect for human dignity and rights, *inter alia*, freedom of convictions and their expression, as well as moral and ethical principles.

The independence of a public broadcaster

The Constitutional Court's ruling of 16 May 2019

... the mission of a public broadcaster, *inter alia*, the national public broadcaster, which arises from the Constitution, *inter alia*, Article 25 thereof, implies the independence of the said broadcaster, which is necessary in order to carry out this mission. In its ruling of 21 December 2006, when revealing the particularities of the status of a public broadcaster, which are determined by its special constitutional mission, the Constitutional Court held that the constitutional mission of a public broadcaster also implies that the material, organisational, and financial conditions must be created in order that a public broadcaster could successfully carry out its mission, as well as that a legal regulation established by means of a law must ensure the independence of a public broadcaster from interference by public authorities, officials, and other persons with its activity; this is a *conditio sine qua non* in order that a public broadcaster could carry out its mission.

... under the Constitution, a public broadcaster must always remain independent of any particular – private or group – interests (political, economic, or other interests); the activity of a public broadcaster must not depend on any party or other political preferences. In its ruling of 21 December 2006, the Constitutional Court also emphasised that the mere fact that the state is the founder of a public broadcaster does not mean in itself that the imperative of the independence of a public broadcaster is deviated from.

In this context, it should be noted that the independence of a public broadcaster, *inter alia*, the national public broadcaster, which is implied by the mission of the said broadcaster, arising from the Constitution, *inter alia*, Article 25 thereof, from interference with its activity by public authorities, officials, or other persons means, *inter alia*, that a public broadcaster must be guaranteed the right, without external interference and having regard to its constitutional mission, to freely determine the structure of its programmes, as well as the content, timing, etc. of its broadcasts (independence with respect to freedom of information, i.e. editorial independence), as well as the right to organise and conduct, in an autonomous manner and in accordance with the procedure established in laws, its own activity through its own managing bodies, which are independent of public authorities, officials, political parties and organisations, and other persons, *inter alia*, from private (commercial) broadcasters (institutional independence).

In this context, it should be mentioned that, as held by the Constitutional Court in its ruling of 21 December 2006, a law must establish such a model of the management of a public broadcaster that would ensure that the constitutional mission of the said broadcaster will not be deviated from and that the independence of the said broadcaster will not be denied; in itself, it is impossible to regard as a deviation from the imperative of independence the fact that certain state institutions, which are provided for in a law, may participate in the formation of the highest body of a public broadcaster, where the said highest body has the powers to decide the most important issues of the activity of the public broadcaster, as, for instance, to plan the strategy for the activity of the public broadcaster, to establish the requirements for programmes and broadcasts, etc. (this highest body may be named in a varied manner: the council, board, etc.), as well as in the formation of the institutions supervising and controlling the activity of the public broadcaster; however, a public broadcaster founded by the state may reasonably be regarded as a public broadcaster only when the institution that has the powers to decide the most important issues of the activity of the public broadcaster is composed not of state officials or state servants, but of persons who can reasonably be called representatives of all society, but not of some interest groups (including professional and institutionalised groups, *inter alia*, those linked with the mass media, with radio and television in particular, as well as groups uniting persons whose creative work or production can be promoted in a varied manner by the public broadcaster).

... it should be noted that the above-mentioned aspects of the independence of a public broadcaster, *inter alia*, the national public broadcaster, which is implied by the mission of a public broadcaster, *inter alia*, the national public broadcaster, i.e. its independence in terms of freedom of information (editorial independence) and its institutional independence, are inseparably linked. Failure to ensure the institutional independence of a public broadcaster, *inter alia*, the national public broadcaster, *inter alia*, interference by public authorities or officials with the exercise of the powers, established in the law, of the bodies of a public broadcaster in organising its activities, can create the preconditions for state authorities

or officials to have influence, *inter alia*, on the establishment of the structure of programmes and the content of broadcasts, i.e. to violate the editorial independence of a public broadcaster.

The accountability of a public broadcaster to the public and control over its activity

The Constitutional Court's ruling of 16 May 2019

... the special mission of a public broadcaster, *inter alia*, the national public broadcaster, which derives from the Constitution, *inter alia*, Article 25 thereof, and which, as mentioned before, is to ensure the public interest, i.e. the public interest, consolidated, defended, and protected by the Constitution, to be properly informed, also implies that a public broadcaster, *inter alia*, the national public broadcaster, is accountable to the public.

In this context, it should be noted that the state is a political organisation of society as a whole, whose power extends over the entire territory of the state and is designed to ensure human rights and freedoms and to guarantee the public interest (ruling of 30 December 2003). The Constitutional Court also held in its ruling of 21 December 2006 that the nature and constitutional mission of a public broadcaster also imply not only the obligation of the state to found a public broadcaster, but also the duty to ensure the activity of a public broadcaster, *inter alia*, the duty to allocate proper financing to a public broadcaster, so that it could carry out the said mission and provide the respective public broadcasting services.

Thus, the independence of a public broadcaster, *inter alia*, the national public broadcaster, which is implied by its mission, arising from the Constitution, *inter alia*, Article 25 thereof, does not deny the duty of a public broadcaster, *inter alia*, the national public broadcaster, to account to the public for the fulfilment of its constitutional mission, as well as the duty of the state, which is the founder of a public broadcaster, *inter alia*, the national public broadcaster, to control the implementation of the constitutional mission by the said broadcaster and the use of the resources allocated to the said broadcaster for the purpose of implementing this mission, *inter alia*, the use of the funding allocated to it by the state.

In this context, it should be noted that ... under the Constitution, only the Seimas is the representation of the People; under the Constitution, each member of the Seimas represents the whole of the People.

Thus, the accountability of a public broadcaster, *inter alia*, the national public broadcaster, to the public, which is implied by the mission of the said broadcaster, arising from the Constitution, *inter alia*, Article 25 thereof, means not only that a public broadcaster, *inter alia*, the national public broadcaster, is obliged to make public its activity reports, containing, *inter alia*, information on the fulfilment of its constitutional mission and the use of the state budget appropriations allocated for the implementation of this mission, but also that, in accordance with the procedure laid down in laws, a public broadcaster, *inter alia*, the national public broadcaster, is obliged to report to the Seimas as the representation of the People and its founder on its activities, *inter alia*, on how it implements its constitutional mission and how the state budget appropriations allocated for the implementation of this mission are used.

In this context, it should be noted that the Constitutional Court held in its ruling of 21 December 2006 that a law must also establish the respective model of control over the activity of the national public broadcaster; such control over the activity of the national public broadcaster must be comprehensive, it may not be formal; such control may not be exercised by the persons who themselves are related to the national public broadcaster by official, property, or financial links or are dependent on it in other ways, or who themselves have interests related to the activity of the national public broadcaster, or who belong to the interest groups (also institutionalised ones) that have precisely such interests; this control over the national public broadcaster includes, among other things, a financial and property audit, which is a very important part of this control; *inter alia*, control must be exercised over whether the national public broadcaster abuses its special legal status and the possibilities granted by this status (including in the radio and television services market), whether the constitutional imperatives of fair competition are deviated from in its activity, and whether the funds allocated (not exclusively from the state budget) to the national public broadcaster so that it could carry out its special constitutional mission are used precisely for this purpose; however, control over the activity of the national public broadcaster cannot be understood solely as a financial or property audit: such control must also include (both *a priori* (preliminary) and

a posteriori (successive)) control over direction in the content and structure of the programmes and broadcasts of the national public broadcaster, i.e. such monitoring and checking of its activity where the programmes and broadcasts of the national public broadcaster are also assessed from the aspect of the mission of this broadcaster, which arises, *inter alia*, from the Constitution and is defined in laws; such control must not become censorship of the programmes and broadcasts of the national public broadcaster, which, in the same way as censorship of any other mass media, is *expressis verbis* prohibited by the Constitution.

... under the Constitution, the regulation of the activity of the national public broadcaster should be based on such a model of control over its activity that, on the one hand, would create the preconditions for the state to effectively fulfil its duty of control over the implementation by the national public broadcaster of its constitutional mission and over the use of the resources allocated for the implementation of this mission and that, on the other hand, would be compatible with the independence of the national public broadcaster, which is implied by its mission, arising from the Constitution, *inter alia*, Article 25 thereof, from interference with its activity by public authorities, officials, or other persons. Such a model, which is implied by the Constitution, of effective control over the activity of the national public broadcaster includes internal and external control over its activity.

It should be noted that internal control over the activity of the national public broadcaster is control over its activity as exercised or organised by its highest body, which has the powers to deal with the most important issues of the activity of this broadcaster, *inter alia*, control over direction in the structure and content of programmes and broadcasts (i.e. such monitoring and checking of the activity of the national public broadcaster where its programmes and broadcasts are assessed, *inter alia*, in terms of the mission of this broadcaster, which arises from the Constitution and is defined in laws), as well as control over the use of the resources allocated to the national public broadcaster by the state and the supervision of the organisation and performance of the activity of the national public broadcaster. As mentioned before, the said highest body of the national public broadcaster must be composed not of state officials or state servants, but of persons who can reasonably be called representatives of the public, but not of some interest groups. It should be noted that, when internal control over the activity of the national public broadcaster is carried out, compliance with the said requirement creates the preconditions not to violate the independence of the national public broadcaster (implied by its mission, arising from the Constitution, *inter alia*, Article 25 thereof) from interference by public authorities, officials, or other persons.

It needs to be noted that external control over the activity of the national public broadcaster means that control over its activity (over how such a broadcaster implements its constitutional mission and uses the resources allocated for the implementation of this mission) must be exercised by state authorities and/or officials with the respective powers established in the Constitution and/or laws. It should be emphasised that, having regard to the imperative of the independence of the national public broadcaster, which is implied by its mission, arising from the Constitution, *inter alia*, Article 25 thereof, the activity of the national public broadcaster must be controlled by such state authorities and/or officials that, in accordance with the Constitution and/or laws, exercise their powers independently, primarily, of the political authorities (such as prosecutors, who, under Paragraph 3 of Article 118 of the Constitution, are independent and obey only the law when performing their functions, or independent bodies that are established by means of laws and regulate and supervise the activities of the media).

[...]

... under the Constitution, *inter alia*, Paragraph 1 of Article 134 thereof, the National Audit Office has the powers to exercise external control over the activity of the national public broadcaster – to conduct a state audit, *inter alia*, to inspect the activity of the national public broadcaster, among other things, in terms of economy, efficiency, and effectiveness, *inter alia*, by assessing the lawfulness of the management and use of the state assets entrusted to the broadcaster. It should be emphasised that the assignment given to the National Audit Office, which must exercise its constitutional powers independently of other state authorities, *inter alia*, from the Seimas, the President of the Republic, or the Government, to conduct a state audit of the national public broadcaster does not in itself violate the independence of the national public

broadcaster (implied by its mission, arising from the Constitution, *inter alia*, Article 25 thereof) from interference with its activity by public authorities, officials, or other persons.

... implementing its constitutional powers, the Seimas performs the classical functions of the parliament of a democratic state under the rule of law, *inter alia*, it exercises parliamentary control; in exercising its power under Item 14 of Article 67 of the Constitution to supervise the execution of the state budget, the Seimas, while having regard to the Constitution, *inter alia*, to the principles of responsible governance and a state under the rule of law, which are consolidated in the Constitution, may also exercise parliamentary control over the institutions that have been founded by means of laws, are accountable to the Seimas, and are independent managers of state budget appropriations. It has ... been mentioned that the accountability of the national public broadcaster to the public, which is implied by its mission, arising from the Constitution, *inter alia*, Article 25 thereof, *inter alia*, means that, in accordance with the procedure established in laws, the national public broadcaster is obliged to account for its activity to the Seimas as the representation of the People and as its founder, *inter alia*, for the implementation of its constitutional mission and the use of the state budgeted appropriations allocated for the implementation of this mission.

Therefore, the Constitution cannot be interpreted as meaning that, purportedly, it does not allow the exercise of parliamentary control over the activity of the national public broadcaster. As mentioned before, under the Constitution, only the Seimas is the representation of the People; a member of the Seimas is not a representative of political parties or political organisations, public or other organisations, interest groups, territorial communities or the voters of the constituency in which he/she has been elected, but a member of the Seimas represents the whole of the People. In view of this, parliamentary control over the national public broadcaster exercised by the Seimas, *inter alia*, its structural units, cannot in itself be understood as control, prohibited by the Constitution, exercised over the activity of the national public broadcaster by persons pursuing their own interests in connection with the activity of the national public broadcaster.

However ... in its nature and essence, the Seimas is a political institution, whose decisions reflect the political will of the majority of the members of the Seimas and are based on political arrangements and compromises. With this in mind, it should be emphasised that parliamentary control over the national public broadcaster carried out under the Constitution must not violate the imperative of the independence of the national public broadcaster, which is implied by its mission, arising from the Constitution, *inter alia*, Article 25 thereof. This means that, under the Constitution, parliamentary control exercised over the national public broadcaster by the Seimas must not undermine the independence of the national public broadcaster in terms of freedom of information (editorial independence), *inter alia*, it is not allowed to carry out such control over the programmes and broadcasts of the national public broadcaster that would be equivalent to censorship; in addition, it is not allowed to violate the institutional independence of the national public broadcaster, *inter alia*, by interfering with the exercise of the powers, established by means of a law, of the bodies of this broadcaster in organising its activity, thereby creating the preconditions for exerting political influence on the content of programmes and broadcasts.

... although, under the Constitution, *inter alia*, Article 76 thereof, the Seimas has broad discretion to set up ad hoc structural units – ad hoc investigation commissions, *inter alia*, designated for fulfilling the functions of parliamentary control, it may not set up such ad hoc investigation commissions whose mandate would include an investigation inflicting damage on freedom of the media, enshrined in Article 25 of the Constitution, *inter alia*, on the mission of the national public broadcaster, arising from this article, and on the independence of the national public broadcaster, which is implied by the said mission. This means, among other things, that, under the Constitution, *inter alia*, the constitutional principles of responsible governance and a state under the rule of law, and having regard to the independence of the national public broadcaster, which is implied by its mission, arising from the Constitution, *inter alia*, Article 25 thereof, it is not allowed to set up such ad hoc investigation commissions of the Seimas that would be given the task of carrying out an investigation that could create the preconditions for taking over the powers, consolidated in the Constitution and/or laws, of other state authorities, *inter alia*, the powers of the National Audit Office, to exercise external control over the activity of the national public broadcaster, *inter alia* ... drafting such

decisions that, under the Constitution and/or laws, may only be adopted by the state authorities (their officials) with the respective competence.

On the other hand, having regard to the imperative of the independence of the national public broadcaster, which is implied by its mission, arising from the Constitution, *inter alia*, Article 25 thereof, the Seimas, under the Constitution, *inter alia*, Article 76 thereof, whenever the implementation of its constitutional powers requires it to collect necessary, comprehensive, and objective information, may set up an ad hoc investigation commission where a special issue, i.e. one of state importance, arises in relation, for instance, to a threat to the independence of the national public broadcaster, or in relation to the facts (*inter alia*, violations of law) established by the state authorities and/or officials authorised by the Constitution and/or laws to exercise external control over the national public broadcaster if those facts show that the activity of the national public broadcaster may be not in line with its constitutional mission and/or that the state budget appropriations allocated for the implementation of this mission are used inappropriately. It should also be noted ... that, before the Seimas sets up such an ad hoc investigation commission, it must (*inter alia*, in terms of expediency) assess whether the respective work can be performed by any already established and functioning structural unit of the Seimas that has the powers, under the Statute of the Seimas and/or laws, to exercise parliamentary control over the national public broadcaster.

2.2.7.3. Freedom of advertising

Freedom of advertising

The Constitutional Court's ruling of 29 September 2005

The constitutional concept of freedom of information is especially broad; it encompasses the freedom to seek, receive, and impart most varied information. Information can also encompass such knowledge by imparting which attempts are made to exert influence on the behaviour and choice of people, *inter alia*, to induce them to choose, acquire, and/or use certain goods, to use certain services, or not to choose them. Imparting such information is commonly referred to as advertising.

... freedom of information, which is consolidated in the Constitution, also includes freedom of advertising, *inter alia*, the freedom to advertise goods and services.

All advertising is information; advertising is a particular type of information. Advertising is an important means of competition (rulings of 13 February 1997 and 26 January 2004).

It needs to be emphasised that, by means of advertising goods and services, irrespective of whether or not this activity is charged, attempts are always made to induce the use of certain goods or services. In this context, it needs to be mentioned that the indirect inducement to use certain goods or certain services (where this is done in such a manner that the recipients of advertising would not understand that they receive advertising information as such) should be treated as hidden advertising.

... people can be induced to use certain goods or services also by such information in the course of imparting which no attempts are made to induce people to do so (e.g. statistical data, technical and other information, which announces something, draws attention to something, etc.). Under certain circumstances, imparting such information can exert the same influence on the recipients of such information as advertising; thus, in this respect, it can amount to advertising.

It must also be emphasised that imparted information not necessarily has only advertising or only non-advertising content: it can contain both the elements of advertising content and such information the imparting of which is not advertising.

[...]

... The constitutional concept of freedom of advertising does not encompass imparting such advertising that disinforms and deliberately deceives consumers.

Limiting freedom of advertising in order to protect human health

See 2.2.7.1. The protection of the freedom to express convictions and freedom of information, the ruling of 29 September 2005 (“Limiting freedom of information (*inter alia*, advertising) in order to protect human health (Paragraph 3 of Article 25 of the Constitution)”).

Limiting the advertising of medicines

See 2.2.7.1. The protection of the freedom to express convictions and freedom of information, the ruling of 29 September 2005 (“Control over imparting information on medicines (*inter alia*, the advertising of medicines), where such information may create the preconditions for harming human health”).

Conditions for limiting freedom of advertising

The Constitutional Court’s ruling of 21 December 2006

The jurisprudence of the Constitutional Court is based on the principled position that freedom of advertising may be limited by means of a law if this is done in order to protect constitutional values; however, such limitation of this constitutional freedom must be necessary in a democratic society and the chosen measures must be proportionate to the objective sought; it is necessary to maintain a reasonable balance between a particular constitutional value and the constitutional right of an individual to seek, receive, and impart information. Information, also that of advertising content, may not be limited only due to the fact that, in the opinion of the legislature, it is not useful to the people, although it is not harmful to them. Selective limitations on advertising, i.e. limitations on imparting and/or receiving advertising by means of certain sources and the non-limitation of imparting and/or receiving advertising by means of other sources are allowed only when such differentiation is objectively justifiable. Under the Constitution, limitations on freedom of advertising, which are established by means of a law, may not be greater than it is necessary in order to protect relevant constitutional values (ruling of 29 September 2005).

2.2.8. Freedom of thought, conscience, and religion

2.2.8.1. The protection of freedom of thought, conscience, and religion

Freedom of thought, conscience, and religion (Article 26 of the Constitution)

The Constitutional Court’s ruling of 13 June 2000

One of the fundamental freedoms of individuals is consolidated in Paragraph 1 of Article 26 of the Constitution: freedom of thought, conscience, and religion is not restricted. This freedom guarantees the possibility for people who hold various views to live in an open, just, and harmonious civil society. This freedom is not only an intrinsic value of democracy, but also an important guarantee that other constitutional human rights and freedoms would be implemented in a fully fledged manner.

Interpreting the provisions of Article 26 of the Constitution in a systemic manner, it should be noted that freedom of thought, conscience, and religion is inseparable from other human rights and freedoms consolidated in the Constitution: the right to have one’s own convictions and to freely express them; the freedom to seek, receive, and impart information (Paragraphs 1 and 2 of Article 25); the right to freely form societies and associations; the right not to be compelled to belong to any society, political party, or association (Paragraphs 1 and 2 of Article 35); the right of parents to bring up their children to be honest people and faithful citizens (Paragraph 6 of Article 38); freedom of culture, science and research, and teaching (Paragraph 1 of Article 42); as well as other human rights and freedoms enshrined in the Constitution.

Freedom of thought, conscience, and religion is also inseparable from the principles consolidated in the Constitution: the equality of persons, the prohibition of granting privileges, and non-discrimination (Paragraphs 1 and 2 of Article 29); the fact that the state recognises the church registration of marriages (Paragraph 4 of Article 38); the secularity of state and municipal establishments of teaching and education (Paragraph 1 of Article 40); the fact that the state recognises the churches and religious organisations that

are traditional in Lithuania, as well as other churches and religious organisations provided that they conform to the criteria provided for in the Constitution (Paragraph 1 of Article 43); freedom of religious activity (Paragraph 3 of Article 43); the freedom of churches and religious organisations to conduct their affairs freely (Paragraph 4 of Article 43); and the absence of a state religion in Lithuania (Paragraph 7 of Article 43). The aforesaid freedom is also inseparable from the general constitutional principle of a state under the rule of law, from the striving for an open, just, and harmonious civil society, as well as from other constitutional principles.

The content of Article 26 of the Constitution is linked with freedom of convictions and their expression, which is consolidated in Article 25 of the Constitution, and with the general criteria of limiting the exercise of rights and freedoms by persons, as established in Articles 27 and 28 of the Constitution.

Democratic states under the rule of law recognise that, as regards its content, freedom of thought, conscience, and religion is a more particular expression of the broader human freedom to have convictions and freely express them. “Convictions” is a broad and diverse constitutional notion, including political and economic convictions, religious feelings, cultural disposition, ethical and aesthetical views, etc.

[...]

Freedom of thought, conscience, and religion becomes a matter of legal regulation only insofar as an individual expresses his/her thoughts or belief in his/her actions. As long as he/she professes his/her religion or belief, this is an inviolable sphere of his/her private life. This state of an individual may not be limited in any way (conclusion of 24 January 1995). In this respect, freedom of belief is an absolute freedom of individuals. The right of an individual not to disclose his/her approach to matters of belief or non-believing is uncontested, either.

Precisely this aspect of the wording “freedom shall not be restricted”, employed in Paragraph 1 of Article 26 of the Constitution, is particularised in Paragraphs 2, 3, and 4 of the same article. The state has the duty to ensure that no one encroaches on the spiritual matters of an individual, i.e. that no one restricts his/her innate right to choose a religion acceptable to him/her or not to choose any, or to change his/her chosen religion or reject it. The state may not establish mandatory requirements that a person must indicate his/her faith or his/her approach to matters of religion. On the other hand, the state has the duty to ensure that a believer or a non-believer, alone or with others, would make use of freedom of thought, conscience, and religion guaranteed to him/her in such a way that the rights and freedoms of other persons would not be violated: under Article 28 of the Constitution, while implementing his/her rights and exercising his/her freedoms, everyone must observe the Constitution and laws and must not restrict the rights and freedoms of other people and, under Article 27 of the Constitution, convictions, practised religion, or belief may not serve as a justification for a crime or failure to observe laws.

Paragraph 2 of Article 25 of the Constitution consolidates an important condition for freedom of convictions and their expression: no one must be hindered from seeking, receiving, or imparting information and ideas. On the other hand, the provision of Paragraph 3 of Article 26 of the Constitution, whereby no one may compel another person or be compelled to choose or profess any religion or belief, means that no religious or materialistic ideas may be forced on an individual against his/her will. The right of parents and guardians to take care of the religious education of their children and wards according to their convictions, as guaranteed in Paragraph 5 of Article 25 of the Constitution, does not mean that the convictions of parents or guardians are forced on children or wards. Under Paragraph 2 of Article 26 of the Constitution, everyone is free to choose the religion or faith that is acceptable to him/her; in addition, everyone has the right not to choose any religion or belief.

Freedom of thought, conscience, and religion (Article 26 of the Constitution)

The Constitutional Court’s ruling of 4 July 2017

... Article 26 of the Constitution, by its content, is linked with Articles 27 and 28 of the Constitution, under which convictions, practised religion, or belief may not serve as a justification for a crime or failure to observe laws (Article 27) and, while implementing his/her rights and exercising his/her freedoms,

everyone must observe the Constitution and laws and must not restrict the rights and freedoms of other people (Article 28). Among other things, this means that, on the grounds of his/her convictions, practised religion, or belief, no one may refuse to fulfil the constitutionally established duties, *inter alia*, the duty of a citizen to perform military or alternative national defence service, or demand exemption from these duties.

2.2.8.2. Relations between the state and churches and other religious organisations. The secularity of state and municipal educational establishments

The recognition of churches and religious organisations by the state; traditional churches and religious organisations (Paragraph 1 of Article 43 of the Constitution)

The Constitutional Court's ruling of 13 June 2000

Paragraph 1 of Article 43 of the Constitution stipulates that the state recognises the churches and religious organisations that are traditional in Lithuania; other churches and religious organisations are recognised provided that they have support in society, and their teaching and practices are not in conflict with the law and public morals.

The constitutional provision that the state recognises the churches and religious organisations that are traditional in Lithuania implies that the legislature may, in certain cases, name certain religious organisations as traditional in Lithuania. The naming of churches or religious organisations as traditional is a special way of their recognition by the state.

The constitutional consolidation of the institution of the recognition of churches and religious organisations as traditional means that such recognition by the state is irrevocable. Tradition is neither created nor abolished by an act of the will of the legislature. The naming of churches and religious organisations as traditional is not an act of their establishment as traditional organisations, but an act stating their tradition – the situation of their relations with society, which does not depend on the will of the legislature. Such an act reflects the development and situation of religious culture in society. It needs to be noted that the provision of Paragraph 1 of Article 43 of the Constitution, which states that there are such churches and religious organisations that are traditional in Lithuania, is the constitutional ground on the basis of which it is allowed to establish the status of traditional churches and organisations, which is different compared with other churches and religious organisations. This means that, without limiting the rights guaranteed for all churches and religious organisations, it is also allowed to ensure, by means of a law, such rights for traditional churches and religious organisations that are not enjoyed by non-traditional churches and organisations.

The principle of the separateness of the state and church, the neutrality of the state in matters of world view and religion, as well as the secularity of the state (Paragraph 1 of Article 40, Paragraphs 4 and 7 of Article 43 of the Constitution)

The Constitutional Court's ruling of 13 June 2000

Paragraph 7 of Article 43 of the Constitution consolidates the principle of the absence of a state religion in Lithuania. This constitutional norm and the norm providing that there are such churches and religious organisations that are traditional in Lithuania mean that the fact that a certain religion is traditional does not suggest that the said religion is a state religion: churches and religious organisations do not interfere with the activity of the state, its institutions, and officials; they do not form the state policy; meanwhile, the state does not interfere with the internal affairs of churches and religious organisations; they conduct their affairs freely according to their canons and statutes (Paragraph 4 of Article 43 of the Constitution).

Interpreting in a systemic manner the norm laid down in Paragraph 7 of Article 43 of the Constitution, whereby there is no state religion in Lithuania, the norm of Paragraph 4 of the same article, according to which churches and religious organisations conduct their affairs freely according to their canons and

statutes, the norms of Paragraph 1 of Article 40, by which state and municipal establishments of teaching and education are secular, as well as other constitutional provisions, the conclusion should be drawn that the principle of the separateness of the state and the church is consolidated in the Constitution. The principle of the separateness of the state and the church is the basis for the secularity of the State of Lithuania, its institutions, and their activities. This principle, together with freedom of convictions, thought, religion, and conscience, which is consolidated in the Constitution, as well as with the constitutional principle of the equality of persons and other constitutional provisions, determines the neutrality of the state in matters of world view and religion.

The fact that the State of Lithuania and its institutions are neutral as regards matters of world view and religion means the separation of the areas of the state and religion, as well as the separation of the mission, functions, and activities of the state and those of churches and religious organisations. It needs to be noted that the neutrality and secularity of the state may not serve as grounds for discriminating believers or for restricting their rights and freedoms. The secularity of the state also implies non-interference by the state with the internal life of churches and religious organisations.

The secularity of state and municipal establishments of teaching and education; providing religious instruction in such establishments of teaching and education (Paragraph 1 of Article 40 of the Constitution)

The Constitutional Court's ruling of 13 June 2000

Paragraph 1 of Article 40 of the Constitution provides that state and municipal establishments of teaching and education are secular. This constitutional provision implies the requirement that these establishments must be tolerant, open, and accessible to people of all religions, as well as to those members of society who are non-believers. The expression “secular”, employed in Article 40 of the Constitution, means that the Constitution establishes the presumption that teaching in state and municipal establishments of teaching and education must have secular content.

Paragraph 1 of Article 40 of the Constitution provides that, at the request of parents, state and municipal establishments of teaching and education provide religious instruction. This provision implies that: (1) religious instruction is provided at the request of parents (taking account of the norm of Paragraph 5 of Article 26 of the Constitution, such a request may also be expressed by the legal guardians of a child); (2) state and municipal establishments of teaching and education have the duty to guarantee that, in cases where there is the request of parents, religious instruction would be provided; (3) religious instruction must be organised in such a way that the secularity of state and municipal establishments of teaching and education would not be denied.

The requirement of Paragraph 1 of Article 40 of the Constitution to provide religious instruction at the request of parents expresses the principle of positive declaration. To express the request that their children be provided religious instruction, also by indicating the teaching of what particular religion is requested, is a constitutional right of parents.

[...]

It is possible to draw the conclusion on the basis of the provision of Paragraph 1 of Article 40 of the Constitution, which provides for the presence of state and municipal establishments of teaching and education, that several co-founders of state or municipal establishments of teaching and education are allowed and that the state and municipalities (their institutions) may be one of the co-founders of such establishments of teaching and education. Under [the law], the educational establishments that state or municipal institutions found together with state-recognised traditional religious communities are state (municipal) schools. Under Paragraph 1 of Article 40 of the Constitution, these jointly founded educational establishments are secular.

It needs to be noted that the norm consolidated in Paragraph 1 of Article 40 of the Constitution guarantees that, at the request of parents, state and municipal establishments of teaching and education provide religious instruction. ...

... under Paragraph 1 of Article 40 of the Constitution, state and municipal establishments of teaching and education are secular; therefore, all their constituent parts – classes, groups, etc. – must also be secular. These classes and groups may not be set up or formed in any other manner on the basis of religion, belief, or religious instruction. Otherwise, the secular nature of state and municipal establishments of teaching and education would be denied and the constitutional principle of the separateness of the state and the church would be violated. On the grounds of religion, groups may be formed exceptionally for receiving religious instruction; however, under the Constitution, on such grounds, classes, groups, etc. may not be set up or formed in any other way in order to provide instruction in secular subjects in state or municipal establishments of teaching and education. ...

[...]

Under the Constitution, state and municipal establishments of teaching and education are secular. In these establishments, no requirements may be set for teachers and other employees in relation to their convictions. Such requirements may not be set by state or municipal institutions, parents at whose request religious instruction is provided, teachers of religion, traditional churches or religious organisations, or any other state-recognised churches or religious organisations. The Constitutional Court emphasises that, otherwise, the norm of Paragraph 1 of Article 42 of the Constitution, by which culture, science and research, and teaching are free ... would also be denied.

[...]

Paragraph 1 of Article 40 of the Constitution consolidates the principle of the secularity of state and municipal establishments of teaching and education. Among other things, this principle means that state and municipal secular establishments of teaching and education are tolerant, open, and accessible to people of all religions, as well as to those members of society who are non-believers; the content of world-view education in these establishments is secular; in the course of teaching secular subjects, no religion or belief is implanted in pupils. No requirements connected with convictions may be set for the teachers (except teachers of religion) or other employees of secular educational establishments. Thus, churches and religious organisations may not set any requirements connected with convictions or beliefs for the teachers (except teachers of religion) or other employees of secular educational establishments. It is only state and municipal institutions, but not churches or religious organisations, that are permitted to manage, organise, and supervise activities carried out by state and municipal educational establishments.

[...]

Under the Constitution, at the request of parents, pupils in state and municipal establishments of teaching and education must be taught not any kind of religion, but the one specified by parents. This gives rise to the duty of state and municipal educational establishments to ensure that pupils would be taught specifically the religion requested by their parents. ...

[...]

Under the constitutional principle of positive declaration, parents may express their request that state and municipal establishments of teaching and education should provide religious instruction, but they are not obliged to express their request that classes in ethics should be offered, i.e. the subject provided for by [means of a law] for pupils who do not attend classes in religious instruction. In the state and municipal educational establishments co-founded with state-recognised traditional religious associations, as well as in all state and municipal establishments of teaching and education, pupils may be provided religious instruction if there is a request expressed by their parents (guardians). ...

[...]

Under Paragraph 6 of Article 38 of the Constitution, parents have the right and duty to bring up their children to be honest individuals and faithful citizens, as well as to support them until they reach the age of majority; according to Paragraph 5 of Article 26 of the Constitution, parents and guardians take care of the religious and moral education of their children and wards according to their own convictions without restrictions. These provisions, together with the norm of Paragraph 1 of Article 40 of the Constitution, whereby state and municipal establishments of teaching and education provide religious instruction at the

request of parents, imply that parents (guardians) have the constitutional right to request that a secular establishment of teaching and education provide religious instruction.

The rights of churches and religious organisations (Paragraph 3 of Article 43 of the Constitution)

The Constitutional Court's ruling of 13 June 2000

Paragraph 3 of Article 43 of the Constitution prescribes: “Churches and religious organisations shall be free to proclaim their teaching, perform their ceremonies, and have houses of prayer, charity establishments, and schools for the training of priests.”

... Paragraph 3 of Article 43 of the Constitution is intended to guarantee the independence of churches and religious organisations, to protect them against interference by state and municipal institutions, their officials, and other establishments with the activity of churches and religious organisations.

The Constitutional Court emphasises that the provisions of Paragraph 3 of Article 43 of the Constitution may not be interpreted as comprising a final list of the rights of churches and religious organisations. The rights of churches and religious organisations are also established in other provisions of the Constitution. The legislature has the right, without violating the Constitution, to establish such rights for churches and religious organisations that are not expressly mentioned in the Constitution.

The different status of the churches and religious organisations that are traditional in Lithuania and other churches and religious organisations (*inter alia*, those that are recognised by the state, but are not traditional in Lithuania) (Paragraph 1 of Article 43 of the Constitution)

The Constitutional Court's decision of 6 November 2007

... the provision “The naming of churches and religious organisations as traditional is ... an act stating both their tradition and the situation of their relations with society, which does not depend on the will of the legislature. Such an act reflects the development and situation of religious culture in society” ... of the Constitutional Court's ruling of 13 June 2000 should be interpreted by taking into account the entire context of that ruling of the Constitutional Court, the fact that the Constitution explicitly consolidates the recognition by the state of the institution of the churches and religious organisations that are traditional in Lithuania (Paragraph 1 of Article 43 of the Constitution), and other provisions of the Constitution.

... the Constitution consolidates the threefold status of churches and religious organisations that operate in Lithuania: some churches and religious organisations are traditional in Lithuania, other churches and religious organisations (non-traditional in Lithuania) are recognised by the state, yet other churches and religious organisations operating in Lithuania do not have the status of traditional churches or religious organisations in Lithuania, nor are they recognised by the state.

When interpreting, in a systemic manner, the provision “The naming of churches and religious organisations as traditional is ... an act stating both their tradition and the situation of their relations with society, which does not depend on the will of the legislature. Such an act reflects the development and situation of religious culture in society” ... of the Constitutional Court's ruling of 13 June 2000, it should be stated that:

- under the Constitution, the Seimas has the powers to name in a law (it not only can, but also must do so) as to which churches and religious organisations are traditional in Lithuania; such naming is the statement of the objective fact that some churches and religious organisations are traditional in Lithuania, but this is not the creation of the tradition of particular churches and religious organisations, since their existence as traditional does not depend on the will of the legislature;

- in a law, only those churches and religious organisations may be named as traditional the tradition of which does not raise any doubts, since they are part of the social, cultural, and spiritual heritage of society and formed in Lithuania historically over the centuries; in order to recognise churches and religious organisations as traditional in Lithuania, it is far from sufficient for them, *inter alia*, to act in Lithuania for several decades or to meet other formal criteria established by the legislature, since the tradition of churches

and religious organisations does not appear even over several generations, but it is a long-term process, which continued uninterrupted for centuries and should be related to the long-lived spiritual and cultural development of Lithuanian society and which has an essential impact on it; therefore, the legislature must name, in laws, those churches and religious organisations as traditional in Lithuania that undoubtedly correspond to the aforementioned concept of tradition; the legislature may not name those churches and religious organisations as traditional in Lithuania that do not correspond to the aforementioned concept; having stated and named in a law which churches and religious organisations are traditional in Lithuania, the legislature may not expand this list, unless a very long time has passed after such a statement and the expansion of such a list would reflect the changed development and situation of religious culture in Lithuanian society;

– since the tradition of specific churches and religious organisations in Lithuania is the objective situation of the relations of churches and religious organisations with society irrespective of the will of the legislature, the legislature may not withdraw the statement of the existence of this tradition.

[...]

... it should be noted that the establishment of specific criteria for the guidance of public administration subjects in decision making regarding entry on the respective register of religious communities and associations as belonging to traditional ones in Lithuania is the prerogative of the legislature. However, whatever criteria the legislature may establish for the guidance of public administration subjects in decision making regarding entry on the respective register of religious communities and associations as belonging to churches or religious organisations that are traditional in Lithuania, such criteria may not deviate from the constitutional concept of the tradition of churches and religious organisations; moreover, the said criteria may not deny such a concept.

[...]

... the provision that the state recognises “other churches and religious organisations ... provided that they have support in society, and their teaching and practices are not in conflict with the law and public morals” of Paragraph 1 of Article 43 of the Constitution means that certain churches and religious organisations that are not traditional in Lithuania may be singled out from other churches and religious organisations that are not traditional, and may be granted a special status by stipulating that they are churches and religious organisations recognised by the state. Taking into account the fact that the said special status is nothing else but the establishment of the situation of a particular church and religious organisation in the state and that this special status may be granted only to those churches and religious organisations that have support in society, it should be held that the granting of this status is within the prerogative of the legislature.

The condition “have support in society”, which is consolidated in Paragraph 1 of Article 43 of the Constitution, means that support in society for a particular church or religious organisation should be strong and long-term; therefore, it may not be limited to a small group of people or a small part of society, or to several decades of activities, or to one or a few generations. Support in society for a particular church and religious organisation should be such that it would leave no doubt as to the presence of that support. When deciding whether a certain church or religious organisation may be granted state recognition, it should be ascertained that there is actual support in society for that church or religious organisation. Under Paragraph 1 of Article 43 of the Constitution, it should also be ascertained that the teaching and practices of that church or religious organisation are not in conflict with the law and public morals. If those conditions are not satisfied, state recognition may not be granted to the respective church or religious organisation.

Thus, the provision that the state recognises “other churches and religious organisations ... provided that they have support in society, and their teaching and practices are not in conflict with the law and public morals” of Paragraph 1 of Article 43 of the Constitution implies a legal situation different from that implied by the provision of this paragraph that “The State shall recognise the churches and religious organisations that are traditional in Lithuania”. The churches and religious organisations that are not traditional in Lithuania may obtain state recognition by the will of the Seimas, following a resolution adopted by it. It should be noted that such state recognition, differently from the statement that a certain church or religious

organisation is traditional in Lithuania, may be withdrawn if a particular church or religious organisation recognised by the state loses its support in society or its teaching and practices become contradictory to laws or public morals.

This means that the different status of the churches and religious organisations that are traditional in Lithuania and other churches and religious organisations that are recognised by the state stems from the Constitution itself. Consequently, the Constitution itself gives rise to the powers of the legislature to establish, by means of a law, such rights for the churches and religious organisations traditional in Lithuania that are not enjoyed by churches and religious organisations that are not traditional in Lithuania (obviously, the establishment of such rights must be substantiated constitutionally). Precisely this is stated in the provisions “the provision of Paragraph 1 of Article 43 of the Constitution, which states that there are such churches and religious organisations that are traditional in Lithuania, is the constitutional ground on the basis of which it is allowed to establish the status of traditional churches and organisations that is different compared with other churches and religious organisations. This means that, without limiting the rights guaranteed for all churches and religious organisations, it is also allowed to ensure, by means of a law, such rights for traditional churches and religious organisations that are not enjoyed by non-traditional churches and organisations” ... of the Constitutional Court’s ruling of 13 June 2000.

In the light of the foregoing arguments, it should be held that the provisions “the provision of Paragraph 1 of Article 43 of the Constitution, which states that there are such churches and religious organisations that are traditional in Lithuania, is the constitutional ground on the basis of which it is allowed to establish the status of traditional churches and organisations that is different compared with other churches and religious organisations. This means that, without limiting the rights guaranteed for all churches and religious organisations, it is also allowed to ensure, by means of a law, such rights for traditional churches and religious organisations that are not enjoyed by non-traditional churches and organisations” ... of the Constitutional Court’s ruling of 13 June 2000 mean the following:

- certain rights, which are not enjoyed by other churches and religious organisations recognised by the state, are established for the churches and religious organisations traditional in Lithuania specifically on the constitutional ground that these churches and religious organisations are traditional in Lithuania;
- if any other church or religious organisation (non-traditional in Lithuania) is recognised by the state, this in itself does not provide grounds for establishing for it such rights that are enjoyed by the churches and religious organisations traditional in Lithuania precisely because they are traditional in Lithuania.

[...]

... as held in this decision of the Constitutional Court, the different status of the churches and religious organisations that are traditional in Lithuania and other churches and religious organisations that are recognised by the state stems from the Constitution itself. It was also held that the Constitution itself gives rise to the powers of the legislature to establish, by means of a law, such rights for the churches and religious organisations traditional in Lithuania that are not enjoyed by churches and religious organisations that are not traditional in Lithuania.

Thus, the Constitution itself also gives rise to the possibility and, in certain cases, necessity of establishing a differentiated legal regulation of the respective relationships with regard to the churches and religious organisations that are traditional in Lithuania and with regard to the churches and religious organisations that are recognised by the state as collective legal subjects.

The establishment of such a differentiated legal regulation may not be interpreted as meaning that, as such, it denies the constitutional right of everyone to freely choose any religion or belief and, alone or with others, in private or in public, to profess his/her religion, to perform religious ceremonies, as well as to practice and teach his/her belief; as such, the establishment of the said legal regulation does not mean that some believers are discriminated, while others are granted privileges.

The status of churches and other religious organisations in the state is established by agreement (Paragraph 5 of Article 43 of the Constitution)

The Constitutional Court’s decision of 6 November 2007

... the Constitutional Court's ruling of 13 June 2000 ... points out, *inter alia*, that the secular nature of the state consolidated in the Constitution implies non-interference by the state with the internal life of churches and religious organisations; meanwhile, the tradition of religion is not identified with its being a state religion. Churches and religious organisations conduct their affairs freely according to their canons and statutes (Paragraph 4 of Article 43 of the Constitution). The status of churches and other religious organisations in the state is established by agreement or by law (Paragraph 5 of Article 43 of the Constitution).

The constitutional provision that "The status of churches and other religious organisations in the State shall be established by agreement or by law" may not be interpreted as meaning the obligation of the state to make agreements with all churches and religious organisations that are traditional in Lithuania, as well as with other churches and religious organisations that are recognised by the state. The state freely decides on whether or not to conclude agreements and, if it decides to conclude such agreements, it also decides with whom they will be concluded. The said constitutional provision may not be interpreted as meaning that, once the state concludes a certain agreement with a specific church or religious organisation, it has to conclude the respective agreements with other churches and religious organisations operating in Lithuania.

2.2.9. Freedom of movement

Freedom of movement (Paragraphs 1 and 2 of Article 32 of the Constitution)

The Constitutional Court's ruling of 29 December 2004

Freedom of movement guaranteed to a citizen is a significant element of the constitutional status of a member of a civil community. It should be noted that the rights and freedoms consolidated in Paragraph 1 of Article 32 of the Constitution are guaranteed both for citizens of the Republic of Lithuania and for other persons who, according to Lithuanian law and international treaties of the Republic of Lithuania, reside in Lithuania in cases where their legal status does not imply a different implementation of these rights and freedoms.

The provisions of Article 32 of the Constitution mean that it is only a citizen himself/herself who has the right to decide in which place of the territory of the Republic of Lithuania to stay, when to leave this place and move to another place, to freely decide as to which permanent or temporary place of residence to choose, and to decide whether to stay in Lithuania or leave, as well as the right to choose himself/herself the time of departure. The right to choose the time of departure also implies the freedom of a citizen to choose any legal manner of departure. It should be noted that, according to the Constitution, it is not allowed to establish such a procedure for the implementation of the said rights and freedoms whereby a citizen would have to ask a certain state institution for permission to implement freedom of movement, which belongs to him/her, as well as the right to choose his/her place of residence in Lithuania, or the right to freely leave Lithuania, or whereby those rights and freedoms would unreasonably be restricted. It is also worth noting that the rights and freedoms consolidated in Article 32 of the Constitution create the preconditions for implementing certain other human rights and freedoms: the freedom to freely choose an occupation or business, the right to ownership, the right to education, etc.

Freedom of movement, the right to choose the place of residence in Lithuania, as well as the right to leave Lithuania freely, which are consolidated in Article 32 of the Constitution, are not absolute. Under Paragraph 2 of Article 32 of the Constitution, they may be subject to limitation; however, this may be done only by means of a law and only when this is necessary for the protection of the security of the state or the health of people; they may also be subject to limitation when this is necessary for administering justice.

... In cases where data, received in accordance with the procedure established by means of laws, about the relations of persons with organised criminal groups, criminal syndicates, or their members, constitute a sufficient basis for considering that those persons may commit grave crimes, i.e. where particular activities of persons or their relations prove a threat to constitutional values, *inter alia*, human rights and freedoms, the constitutional order, the safety of society and the state, as well as public order, it is allowed to establish, by means of a law, preventive measures that provide for certain control over the conduct of

such persons. As such, preventive measures that are aimed at restricting and reducing organised crime should not be considered a constitutionally unreasonable limitation on freedom of movement of a person, as well as the right to freely choose the place of residence in Lithuania and the right to leave Lithuania freely; however, these provisions are applicable only if they are established by means of a law, if they are necessary in a democratic society in order to protect the values defended and protected by the Constitution, if they do not deny the nature and essence of freedom of movement of a person, as well as the right to freely choose the place of residence in Lithuania and the right to leave Lithuania freely, and if they are proportionate to the sought objective that cannot be achieved in any other manner. The jurisdictional and other law-applying institutions, when applying the aforementioned preventive measures, must thoroughly assess the specific situation in every case, must investigate all significant circumstances, must find out whether it is possible to achieve the same objectives without interfering with freedom of movement of a person, the right to freely choose the place of residence in Lithuania, and the right to leave Lithuania freely, without limiting freedom of movement of a person more than necessary in order to achieve the said socially important and constitutionally justifiable objective.

The right of a citizen to move freely; the right of a citizen to return to Lithuania; the right of everyone who is Lithuanian to settle in Lithuania (Article 32 of Constitution)

The Constitutional Court's ruling of 11 January 2019

... Article 32 of the Constitution ... prescribes:

“Citizens may move and choose their place of residence in Lithuania freely and may leave Lithuania freely.

These rights may not be restricted otherwise than by law when this is necessary for the protection of the security of the State or the health of people, or for the administration of justice.

Citizens may not be prohibited from returning to Lithuania.

Everyone who is Lithuanian may settle in Lithuania.”

Thus, Paragraph 1 of Article 32 of the Constitution consolidates the right of every citizen of the Republic of Lithuania to move freely, *inter alia*, to choose his/her place of residence in Lithuania or to leave Lithuania; Paragraph 3 of this article consolidates the right of a citizen to return to Lithuania; and Paragraph 4 enshrines the right of everyone who is Lithuanian to settle in Lithuania.

As noted by the Constitutional Court, freedom of movement guaranteed to a citizen is a significant element of the constitutional status of a member of a civil community; the provisions of Article 32 of the Constitution mean that it is only a citizen himself/herself who has the right to decide in which place of the territory of the Republic of Lithuania to stay, when to leave this place and move to another place, to freely decide as to which permanent or temporary place of residence to choose, and to decide whether to stay in or leave Lithuania, as well as the right to choose himself/herself the time of departure (rulings of 29 December 2004 and 6 February 2015).

The rights and freedoms consolidated in Paragraph 1 of Article 32 of the Constitution are guaranteed both for citizens of the Republic of Lithuania and for other persons who legally reside in Lithuania in cases where their legal status does not imply a different implementation of these rights and freedoms (ruling of 29 December 2004).

Freedom of movement, the right to choose the place of residence in Lithuania, as well as the right to leave Lithuania freely, which are consolidated in Article 32 of the Constitution, are not absolute. Under Paragraph 2 of Article 32 of the Constitution, these rights may be subject to restrictions; however, this may be done only by means of a law and only where this is necessary for the protection of national security or human health; they may also be subject to restrictions where this is necessary for administering justice (ruling of 29 December 2004).

It should be noted that the wording “Citizens may not be prohibited from returning to Lithuania” of Paragraph 3 of Article 32 of the Constitution makes it clear that the right of a citizen of the Republic of Lithuania to return to and reside in Lithuania is absolute. As held by the Constitutional Court in its conclusion of 24 January 1995, under Paragraph 3 of Article 32 of the Constitution, the presence of a

citizen in his/her country is always lawful. Meanwhile, the conditions for the lawfulness of entry into, departure from, and presence in the country by foreign nationals or stateless persons are prescribed in the domestic law (conclusion of 24 January 1995).

As mentioned before, Paragraph 4 of Article 32 of the Constitution consolidates the right of everyone who is Lithuanian to settle in Lithuania. In view of the fact that Paragraph 3 of Article 32 of the Constitution consolidates the right of every citizen of the Republic of Lithuania to return to and reside in Lithuania, it should be held that Paragraph 4 of the same article enshrines the right of everyone who is Lithuanian, but is not a citizen of the Republic of Lithuania, to settle in Lithuania.

In its ruling of 13 November 2006, when interpreting Paragraph 4 of Article 32 of the Constitution, the Constitutional Court noted that all Lithuanians who reside abroad, wherever their permanent residence, have the right to return to Lithuania, their ethnical homeland, at any time. In the same ruling, the Constitutional Court also emphasised that, under the Constitution, it is not allowed to establish any such a legal regulation that would cut off Lithuanians living abroad from the Lithuanian nation; Lithuanians who reside abroad may not be deprived of the possibility of participating in the life of the Lithuanian nation if they so request; Lithuanians residing abroad are an inseparable part of the Lithuanian nation.

However, it should be noted that the wording “Everyone who is Lithuanian may settle in Lithuania” of Paragraph 4 of Article 32 of the Constitution differs from the wording “Citizens may not be prohibited from returning to Lithuania” of Paragraph 3 of the same article, which, as mentioned before, implies the absolute right of a citizen of the Republic of Lithuania to return to Lithuania and reside there. In this regard, it should be held that the provision of Paragraph 4 of Article 32 of the Constitution implies the right of every Lithuanian who is not a citizen of the Republic of Lithuania to enter Lithuania and settle there; however, this right is not absolute and may be limited for reasons of national or public security, public order, the protection of human health, or for similar constitutionally important objectives. At the same time, this means that Paragraph 4 of Article 32 of the Constitution is a constitutional basis for establishing, by means of a law, such a legal regulation whereby Lithuanians who are not citizens of the Republic of Lithuania would have the right to come to Lithuania and settle there under different (easier) conditions compared with other foreign nationals or stateless persons.

It should be noted that the provisions of Article 32 of the Constitution, *inter alia*, Paragraph 1, which establishes the right of each citizen of the Republic of Lithuania to move freely, Paragraph 3, which provides for the absolute right of a citizen of the Republic of Lithuania to return to Lithuania and reside there, and Paragraph 4, which consolidates the right of everyone who is Lithuanian to settle in Lithuania, should be interpreted in conjunction with the provisions of Paragraphs 1 and 4 of Article 22 of the Constitution, which ... consolidate the right of a person to privacy, *inter alia*, the right to the protection of private and family life, also in conjunction with Article 29 of the Constitution, which ... lays down the principle of the equality of persons and the prohibition of discrimination, as well as with the provisions of Paragraphs 1 and 2 of Article 38 of the Constitution, under which ... the Constitution protects and defends all families that meet the constitutional concept of the family, which is based on the content of permanent or long-lasting relationships between family members.

Having regard to the above, it should be held that, under the Constitution, by means of the legal regulation related to freedom of movement of the citizens of the Republic of Lithuania and entry into the Republic of Lithuania for residence purposes by Lithuanians who are not citizens of the Republic of Lithuania, the legislature must create the favourable conditions for the non-national family members of a citizen of the Republic of Lithuania or of a non-national Lithuanian entering Lithuania for residence purposes to enter Lithuania and reside there together with the respective citizen of the Republic of Lithuania or non-national Lithuanian entering Lithuania for residence purposes.

At the same time, it should be emphasised that, under the Constitution, the right of the non-national family members of a citizen of the Republic of Lithuania and the non-national family members of a non-national Lithuanian entering Lithuania for residence purposes to enter Lithuania and reside there together with the respective citizen of the Republic of Lithuania or non-national Lithuanian entering Lithuania for residence purposes is not absolute. This right may be subject to restrictions where necessary in a democratic

society for reasons of national or public security, public order, the protection of human health, or for similar constitutionally important objectives; it should be noted that such a legal regulation that would limit this right in the absence of a constitutionally important objective would create the preconditions for the violation of freedom of movement of a citizen of the Republic of Lithuania, consolidated in Article 32 of the Constitution, *inter alia*, the right of a citizen of the Republic of Lithuania to return to Lithuania and reside there, which is enshrined in Paragraph 3 of this article, as well as the right of everyone who is Lithuanian to settle in Lithuania, which is consolidated in Paragraph 4 of Article 32 of the Constitution.

The right to reunification for a family in the context of the free movement of persons within the EU and migration (Paragraphs 2 and 3 of Article 21, Paragraphs 1 and 4 of Article 22, Articles 29 and 32, and Paragraphs 1 and 2 of Article 38 of the Constitution and the Constitutional Act on Membership of the Republic of Lithuania in the European Union)

See 2.4. Economic, social, and cultural rights, 2.4.2. Social rights, 2.4.2.4. The duty of the state to ensure the protection of family, motherhood, fatherhood, and childhood, the ruling of 11 January 2019.

2.2.10. Freedom of association

The right to freely form societies, political parties, and associations (Article 35 of the Constitution)

The Constitutional Court's ruling of 21 December 2000

Article 35 of the Constitution prescribes:

“Citizens shall be guaranteed the right to freely form societies, political parties, and associations provided that the aims and activities thereof are not contrary to the Constitution and laws.

No one may be compelled to belong to any society, political party, or association.

The founding and activities of political parties and other political and public organisations shall be regulated by law.”

The constitutional right to freely form societies, political parties, or associations is manifold; its content is composed of the right to form societies, political parties, or associations, the right to join them and take part in their activities, as well as the right not to be a member of any societies, political parties, or associations and the right to leave such entities. Thus, the Constitution guarantees the right to decide of one's own free will whether to belong or not to belong to a certain society, political party, or association.

The concepts “society”, “political party”, and “association”, which are consolidated in Paragraphs 1 and 2 of Article 35 of the Constitution, as well as the expression “other political and public organisations”, which is consolidated in Paragraph 3 of the same article, express the diversity of entities that are founded on a voluntary basis in order to serve the needs of their members in the political, economic, cultural, or social areas and in other spheres of life. Attempting to implement their rights and interests in the political, economic, cultural, or social areas and in other spheres of life, individuals may form various entities provided that the aims and activities thereof do not conflict with the Constitution and laws.

It needs to be noted that the right to freely form societies, political parties, or associations, which is guaranteed in the Constitution, means that an individual either implements or does not implement this right of his/her own free will. Paragraph 2 of Article 35 of the Constitution *expressis verbis* stipulates that no one may be compelled to belong to any society, political party, or association. This is the constitutional guarantee protecting persons from belonging to any union against their will.

The free will of a person is a fundamental principle of his/her membership in various societies, political parties, or associations. This constitutional principle must be observed when the establishment and activities of all types of associations, as well as relationships connected with their membership, are regulated in legal acts, regardless of the legitimate objectives sought by these entities.

The right of the owners of premises in blocks of flats to form societies

The Constitutional Court's ruling of 21 December 2000

When establishing societies for the purpose of possessing and using common shared property, the owners of residential and non-residential premises in blocks of flats implement the constitutional right to organise in order to achieve a certain common objective. ... this constitutional right may be implemented only on the basis of the free will of individuals. Therefore, membership in societies of the owners of blocks of flats must be based on the voluntary principle. When the establishment, activities, and membership relationships of such societies are regulated by means of a law, it is necessary, as in the case of any other society, to observe the requirement, consolidated in Paragraph 2 of Article 35 of the Constitution, that no one, i.e. neither a natural person nor a formation of natural persons, may be compelled to belong to any society, political party, or association. Thus, in cases where part of the owners of premises in a block of flats decides to establish a society, the other owners may not automatically be regarded as members of such a society. Such forced membership in a society is impermissible.

While implementing his/her rights and exercising his/her freedoms, everyone must observe the Constitution and laws and must not restrict the rights and freedoms of other people (Article 28 of the Constitution). The unwillingness or refusal of individual owners to be members of an established society of the owners of a bloc of flat may not hinder other owners to establish such a society and implement the possession and use of common shared property through the said society. At the same time, it needs to be noted that the voluntary principle of membership in a society means that an owner has the right not to join such a society, i.e. not to relate himself/herself with the membership relationship in a society; however, in this case, such an owner of residential and non-residential premises in a bloc of flats remains a subject of other legal relationships linked with the implementation of the rights of common shared ownership.

Since ownership includes obligations, the owners of residential and non-residential premises in a block of flats (natural and legal persons alike) must fulfil the obligations arising out of the implementation of common shared ownership (pay the expenses connected with maintenance, repair, improvement, etc. of the objects of communal use of the house) irrespective of whether they are or are not members of a particular society. Disputes between a society and its members arising in connection with this may be decided under judicial procedure (Paragraph 1 of Article 30 of the Constitution).

Freedom of association (Article 35 of the Constitution)*The Constitutional Court's ruling of 1 July 2004*

Article 35 of the Constitution consolidates one of the fundamental rights of a citizen of a democratic state – the right to associate or freedom of association. The right to associate is one of the guarantees of civil and political action. ...

The associations provided for in the Constitution are based on voluntary membership; they are founded and operate in the interests of their members. The autonomy of the associations provided for in the Constitution with respect to state authority bodies and other state or municipal institutions, in other words, with respect to public power, is an essential element of the constitutional legal status of such entities. The said associations may efficiently operate as an important element of civil society, as well as be a form of self-expression of citizens of a democratic state and a guarantee of public activity, only on the condition that such associations are autonomous with respect to state authority bodies and other state and municipal institutions. The autonomy of the said entities with respect to public power implies, *inter alia*, their right to independently regulate their internal order in their own acts (articles of association, statutes, etc.) in accordance with laws.

[...]

The constitutional right to freely form associations is linked with the possibility of holding various positions in such entities; the said possibility is a derivative from the constitutional right to freely form associations. The procedure for taking up the said positions in associations is established not by the state, but by the acts regulating the internal order (articles of association, statutes, etc.) of the respective associations (which, as mentioned before, under the Constitution, are autonomous with respect to public power).

The right to freely form political parties (Paragraph 1 of Article 35 of the Constitution)

The Constitutional Court's ruling of 14 April 2006

The right of citizens, which is guaranteed by Paragraph 1 of Article 35 of the Constitution, to freely form, *inter alia*, political parties provided that the aims and activities thereof are not contrary to the Constitution and laws is one of the fundamental rights of a citizen of a democratic state. In its ruling of 21 December 2001, the Constitutional Court held that the content of the constitutionally guaranteed right to freely form political parties is composed of the right to form political parties and the right to join them and take part in their activities; the Constitution guarantees the right to decide of one's own free will whether to belong or not to belong to a certain political party; a person implements this constitutional right of one's own free will; this free will of a person is a fundamental principle of his/her membership in political parties.

The constitutional right of citizens to freely form, *inter alia*, political parties and political organisations (which, as mentioned before, includes the right of citizens to take part in the activities of political parties) is not absolute; it can be limited by means of a law, but to the extent not greater than allowed by the Constitution itself. In this context, it needs to be noted that, where limitations on the said constitutional right are established by means of a law, *inter alia*, where citizens are prohibited from participating in the activities of political parties, regard must be paid to the norms and principles of the Constitution, *inter alia*, the principle of the equality of the rights of persons, which is consolidated in Article 29 of the Constitution, as well as the constitutional principle of a state under the rule of law.

The limitations and prohibitions on the constitutional right to freely form political parties and political organisations are established in the Constitution itself: Paragraph 2 of Article 113 of the Constitution provides that a judge may not participate in the activities of political parties and other political organisations; Article 141 of the Constitution states that persons performing actual military service or alternative service, as well as the officers of the national defence system, the police, and the interior, non-commissioned officers, re-enlistees, and other paid officials of paramilitary and security services who are not retired to the reserve may not take part in the activities of political parties and political organisations; the provision of Paragraph 3 of Article 118 of the Constitution, according to which, when performing their functions, prosecutors are independent and obey only the law, also implies the prohibition precluding prosecutors from being members of political parties and political organisations and from participating in their activities; under Paragraph 2 of Article 83 of the Constitution, a person elected the President of the Republic must suspend his/her activities in political parties and political organisations until the beginning of a new campaign for the election of the President of the Republic. In this context, it should also be mentioned that the right of citizens to freely form political parties, which is consolidated in Article 35 of the Constitution, may be temporarily limited after martial law is imposed or a state of emergency is declared (Article 145 of the Constitution).

The participation of political parties in elections

The Constitutional Court's ruling of 9 November 2010

Political parties belong to such a type of associations the aim and purpose of the establishment and activity of which are inseparable from striving for political power (ruling of 10 February 2005). Political parties implement this striving, *inter alia*, by participating in elections to representative political institutions.

Therefore, under the Constitution, no such legal regulation is allowed that could prevent political parties or candidates nominated or supported by political parties from participating in elections to representative political institutions. However, this requirement may not be interpreted as consolidating the exclusive right of political parties (their members or candidates supported by political parties) to participate in forming representative political institutions.

The constitutional concept of political organisations

The Constitutional Court's ruling of 11 May 2011

The Constitution consolidates the institutions of political parties and political organisations (Paragraph 3 of Article 35, Paragraph 2 of Article 44, Paragraph 2 of Article 83, Paragraph 2 of Article 113, Paragraph 1 of Article 114, and Article 141 of the Constitution). Political organisations may not be identified with political parties; the particularities of founding political organisations and their activities must be established in a law.

In its ruling of 9 November 2010, the Constitutional Court revealed some features of the constitutional institution of political organisations ...: when defining the concept of political organisations in a law, the legislature may provide for their variety, *inter alia*, for such political organisations that are founded in order to meet various socially important needs, to conduct activities that are useful for society and, at the same time, to raise certain political aspirations; in the course of consolidating the right of political organisations, *inter alia*, those founded in order that they could participate in elections, to present lists of candidates, it is necessary to establish certain special requirements, which must be complied with, as, for instance: such political organisations may be founded only by persons (certain number thereof) who have the active electoral right regarding elections to a concrete institution, etc.

Political parties as special participants in public political life; the powers of the legislature to regulate the financing of political parties (Paragraph 3 of Article 35 of the Constitution)

The Constitutional Court's ruling of 29 March 2012

... it ... needs to be noted that:

- the aims of founding political parties and of their activity are inseparable from the striving for public power and, thus, also from participation in elections to representative institutions of public power (ruling of 9 February 2007);

- the political striving is an essential feature of a party, which distinguishes a party from other collective subjects having the legal forms that are established in laws ...;

- under the Constitution, no such legal regulation is allowed that could prevent political parties or candidates nominated or supported by political parties from participating in elections of the members of the Seimas (ruling of 1 October 2008).

In this context, it needs to be noted that, under Paragraph 1 of Article 35 of the Constitution, whereby citizens are guaranteed the right to freely form societies, political parties, and associations (provided that the aims and activities thereof are not contrary to the Constitution and laws), political parties constitute one of the forms (*expressis verbis* indicated in the Constitution) of free unification of citizens.

It also needs to be noted that the direct consolidation of political parties in Articles 35, 44, 83, 113, 114, and 141 of the Constitution points to the specificity of their political striving, as well as the specificity of the implementation of that striving.

Thus, under the Constitution, *inter alia*, the striving for an open civil society, which is enshrined in the Preamble to the Constitution, and the right of citizens to freely form societies, political parties, or associations (provided that the aims and activities thereof are not contrary to the Constitution and laws), which is guaranteed by Paragraph 1 of Article 35 of the Constitution, political parties, as far as their striving for public power and constitutionally guaranteed participation in elections of the members of the Seimas are concerned, are singled out among all of the legal forms of collective subjects that may be established in laws; under the Constitution, political parties (provided that the aims and activities thereof are not contrary to the Constitution and laws) should be treated as special participants not only in the process of elections to institutions of public power, but also as special participants in public political life taking place in the period between election campaigns; the variety of, as well as competition among, such participants, i.e. the multi-party system, creates the preconditions for ensuring political pluralism.

In this context, it also needs to be noted that the legislature, under Paragraph 3 of Article 35 of the Constitution, must regulate, *inter alia*, the founding and activities of political parties. When doing this, the legislature, under the Constitution, *inter alia*, Paragraph 3 of Article 35 thereof, may establish, *inter alia*, the sources and ways of funding political parties, as well as the procedure for control over this funding.

It needs to be noted that the Constitution does not directly provide for any sources and ways of the funding, or any grounds for control over the funding, of election campaigns and their participants, *inter alia*, political parties; however, the principles related thereto accordingly arise from the Constitution, *inter alia*, from the striving for an open civil society, which is enshrined in the Preamble thereto, as well as from the specificity of the political striving of parties, which are consolidated directly (indicated *expressis verbis*) in Articles 35, 44, 83, 113, 114 and 141 thereof, and from the specificity of the implementation of the said striving.

Thus, under the Constitution, *inter alia*, Paragraph 3 of Article 35 thereof, when regulating the relationships connected with the founding and activities of political parties, the legislature may, at the same time, lay down such sources and ways of funding political parties (including, *inter alia*, the allocation of state budget funds to political parties) by means of which it is sought to ensure that the political parties whose candidates have received a significant approval (trust) from voters in the respective elections would have the possibility of strengthening that approval (trust) of voters by democratic and lawful means of implementing their political striving.

It needs to be noted that the legislature, when consolidating a model of the regulation of the relationships connected with the sources and ways of the funding and control over the funding of political parties, is bound by the Constitution, *inter alia*, by the striving for an open civil society, enshrined in the Preamble to the Constitution, i.e. the legislature is not permitted to create any preconditions for denying or distorting the nature of political parties as public (non-state) organisations, for exerting a negative influence on the free development of the multi-party system, or for disproportionately complicating the possibilities for the political parties not satisfying the conditions for the receipt of state budget funds to implement their political striving, nor may it lay down any legal regulation creating the preconditions for receiving public (state) funding by the parties that have committed such violations of laws that are assessed as substantial by the state institutions empowered to conduct control over the funding of a political campaign.

... it should also be noted that:

- the Constitution consolidates the principle of responsible governance (rulings of, *inter alia*, 1 July 2004 and 13 December 2004);
- the Constitution, *inter alia*, Paragraph 2 of Article 128 thereof, gives rise to the requirement that state-owned property must be used sparingly, not wasted, and managed rationally (rulings of 5 July 2007, 20 March 2008, and 22 December 2011).

Consequently, under the Constitution, the legislature may establish such a model of the regulation of the relationships connected with the sources and ways of funding political parties that entails the allocation of state budget funds (allocations) to those political parties whose candidates have received a significant approval (trust) from voters in the respective elections; however, such a legal regulation may create no possibilities of receiving such an amount of state budget funds (allocations) that would give rise to the preconditions for denying or distorting the nature of political parties as public (non-state) organisations, for exerting a negative influence on the free development of the multi-party system, for disproportionately complicating the possibilities for the political parties not satisfying the conditions for the receipt of the aforesaid funds to implement their political striving, or for violating the principle of responsible governance and that of the rational management of state-owned property.

[...]

Consequently, under the Constitution, the legislature, when regulating the relationships connected with the founding and activities of political parties, *inter alia*, the ways of funding thereof, may, *inter alia*, stipulate that not all founded and operating political parties, but only those whose candidates have received a certain (sufficient) approval from voters in elections to institutions of public power, may be granted the targeted state budget funds allocated to support political parties.

Legal persons as specific entities of legal relationships

The Constitutional Court's ruling of 4 May 2018

... in order to effectively implement constitutional rights and freedoms, *inter alia*, those provided for in Paragraph 1 of Article 35 and Paragraph 1 of Article 46 of the Constitution, it is allowed to set up entities of legal relationships (*inter alia*, associations, political parties, and economic operators) whose legal form is a legal person and whose objectives are related to the implementation of the interests of their founders in the political, economic, cultural, social, and other spheres of life. The specificity of the entities of legal relationships of such a legal form – legal persons – is revealed, *inter alia*, by the fact that, from the moment of their legal registration, they acquire legal capacity and have autonomous structures, and their rights and duties are implemented by single-person or collegial management bodies.

In order to reveal the content of the constitutional principle of a state under the rule of law, it should be noted that the Constitutional Court has also held that the mission of the state is to ensure human rights and freedoms, as well as to guarantee the public interest (*inter alia*, the rulings of 30 December 2003, 13 December 2004, and 26 June 2017). ... the above-mentioned concept of a legal person and the public interest determine that information concerning the establishment of specific entities of legal relationships – legal persons (which are set up in order to effectively implement constitutional rights and freedoms, *inter alia*, those provided for in Paragraph 1 of Article 35 and Paragraph 1 of Article 46 of the Constitution, and the interests of their founders in the political, economic, cultural, social, and other spheres of life), *inter alia*, information concerning their legal registration, must be public. In this context, it should be noted that, as it has been held by the Constitutional Court, the public interest is dynamic and subject to change (rulings of 8 July 2005, 6 January 2011, and 12 April 2018).

In view of the above, it should be held that, under the Constitution, *inter alia*, the constitutional principle of a state under the rule of law, the legislature, when regulating the establishment of legal persons and having regard to the requirements determined by the public interest, must stipulate that the registration of legal persons requires the provision of certain mandatory data; a domicile of a legal person may be among such data so that the management bodies of the legal person, who implement the rights and duties of the legal person, would be accessible for the persons concerned.

... the constitutional principle of a state under the rule of law implies the requirement to ensure a balance among constitutional values: as the Constitutional Court has held on more than one occasion, in the event of a clash between the values protected by the Constitution, it is necessary to find solutions ensuring that none of these values will be denied or unreasonably limited; otherwise, the balance among the values protected by the Constitution, the constitutional imperative of an open and harmonious civil society, as well as the constitutional principle of a state under the rule of law, would be violated (*inter alia*, the rulings of 23 October 2002 and 4 March 2003 and the conclusion of 19 December 2017); the public interest, as a common interest of the state, all society, or part of society, must be balanced with the autonomous interests of individuals, because not only the public interest, but also the rights of persons, are constitutional values; a fair balance must be ensured in this sphere (rulings of 21 September 2006 and 3 April 2015).

... under the Constitution, *inter alia*, the constitutional principle of a state under the rule of law, when establishing a legal regulation governing the implementation of constitutional rights and freedoms, *inter alia*, those provided for in Paragraph 1 of Article 35 and Paragraph 1 of Article 46 of the Constitution, in the course of establishing legal persons, *inter alia*, when consolidating certain mandatory data that are determined by the public interest and are required to be specified when registering legal persons, the legislature must pay regard to the requirement to ensure a balance among constitutional values: the implementation of these rights and freedoms in the course of establishing legal persons must be reconciled with other constitutional values, *inter alia*, with the right of ownership, which is defended under Paragraphs 1 and 2 of Article 23 of the Constitution, among others, the right of an owner to perform any actions with regard to its property, with the exception of those prohibited by means of a law, as well as to use this property and determine its future in any way that does not violate the rights and freedoms of other persons.

The legal regulation governing the funding of political parties

The Constitutional Court's ruling of 7 June 2019

... under the Constitution, *inter alia*, Paragraph 3 of Article 35 and Paragraph 2 of Article 128 thereof, and the constitutional principles of a state under the rule of law, the protection of legitimate expectations, justice, and responsible governance, in regulating the relationships connected with the founding and activities of political parties, *inter alia*, in establishing the sources and ways of funding political parties, as well as the procedure for control over this funding, the legislature has broad discretion; the legislature, *inter alia*, may choose state budget funds as a source of funding the political parties whose candidates have received significant approval (trust) from voters in the respective elections.

... once the legislature has chosen state budget funds as a source of funding political parties, the Constitution, *inter alia*, Paragraph 3 of Article 35 and Paragraph 2 of Article 128 thereof, and the constitutional principles of a state under the rule of law, the protection of legitimate expectations, justice, and responsible governance give rise to the duty of the legislature to establish such a model of regulating the relationships connected with this chosen source of funding political parties that ensures the proper, transparent, and public allocation of state budget funds to political parties according to the procedure established by means of a law, *inter alia*, according to the clear and objective criteria and/or conditions and other essential elements (including time limits) of the allocation of state budget funds to political parties, so as to ensure, among others, the transparency and objectivity of this process and provide the state institutions authorised to allocate state budget funds with no possibilities for the abuse of the powers conferred on them or for the allocation of state budget funds in an unfair and non-transparent manner, thus in violation of the principles of responsible governance and the rational management of state property. The legislature may not establish such a legal regulation that would create the preconditions for receiving public (state) funds by political parties if they have committed such violations of laws that have been assessed as essential (gross) by the state institutions authorised to exercise control over the funding of a political campaign; the legislature also may not establish a legal regulation consolidating such conditions for allocating state budget funds to political parties that would disproportionately complicate their possibilities of implementing their political striving or would have a negative influence on the free development of the multi-party system.

Freedom of association (Article 35 of the Constitution)

The Constitutional Court's ruling of 11 July 2019

Paragraph 1 of Article 35 of the Constitution prescribes that citizens are guaranteed the right to freely form societies, political parties, or associations provided that the aims and activities thereof are not contrary to the Constitution and laws. Under Paragraph 3 of the same article, the founding and activities of political parties and other political and public organisations are regulated by law.

In its ruling of 1 July 2004, the Constitutional Court held that Article 35 of the Constitution consolidates one of the fundamental rights of a citizen of a democratic state – the right to associate or freedom of association.

Interpreting Paragraph 1 of Article 35 of the Constitution, the Constitutional Court has held that the constitutional right to freely form societies, political parties, or associations is manifold; its content is composed of the right to establish societies, political parties, or associations, as well as of the right to join them and take part in their activities (*inter alia*, the rulings of 21 December 2000, 1 July 2004, and 4 May 2018); the Constitution guarantees the right to decide of one's own free will whether or not to belong to a certain society, political party, or association (ruling of 21 December 2000); the concepts "society", "political party", and "association" express the diversity of entities established on a voluntary basis to serve the needs of their members in the political, economic, cultural, social, and other areas of life (rulings of 21 December 2000, 1 July 2004, and 4 May 2018).

In its ruling of 1 July 2004, the Constitutional Court held that the associations provided for under the Constitution are based on voluntary membership; they are founded and operate in the interests of their

members; an essential element of the constitutional legal status of the constitutionally envisaged associations is their autonomy with respect to state authorities and other state or municipal institutions – in other words, with respect to public power.

It should be noted at the same time that the constitutional right of citizens to freely form, *inter alia*, associations is not absolute; it may be limited by means of a law, but to the extent not greater than allowed by the Constitution itself (ruling of 14 April 2006). The Constitutional Court has held in its rulings on more than one occasion that, under the Constitution, it is allowed to limit the exercise of the rights and freedoms of a person if the following conditions are observed: the limitations are established by means of a law; the limitations are necessary in a democratic society in order to protect the rights and freedoms of other persons, the values consolidated in the Constitution, and the constitutionally important objectives; the limitations do not deny the nature and essence of rights and freedoms; and the constitutional principle of proportionality is followed (*inter alia*, the rulings of 26 January 2004, 9 May 2014, and 18 April 2019), under which the measures established by legal acts and put into application must be proportionate to the objective pursued, and the rights of a person may not be limited more than necessary in order to reach a legitimate, universally significant, and constitutionally justifiable objective (*inter alia*, the rulings of 5 July 2007, 9 June 2011, and 16 June 2015).

As the Constitutional Court held in its decision of 10 February 2005, freedom of societies, political parties, and associations, as consolidated in the Constitution, implies that all these entities may, while following laws, independently regulate their internal order in their own acts (articles of association, statutes, etc.).

... the elements of the content of freedom of association as consolidated in Article 35 of the Constitution – the rights to establish associations and take part in their activities – are to be interpreted as embracing, among others, the right of persons united under an association to define and carry out the activities of the association in such a way that serves their interests, *inter alia*, without interference from state authorities and other state and municipal institutions, provided that the aims and activities of the association are not contrary to the Constitution and laws. This means, among other things, that, under the Constitution, *inter alia*, Paragraph 1 of Article 35 thereof, the founders of associations, while establishing an association that will be operating in their interests, as well as members of the already established associations, while regulating and carrying out the activities of the association operating in their interests, may, *inter alia*, independently decide on granting membership to new members and establish the procedure for granting membership of the association to these members.

On the other hand ... this right of members of an association is not absolute under the Constitution, i.e. it can be limited by means of a law provided that the conditions stemming from the Constitution in relation to limiting the exercise of the rights and freedoms of persons are observed. Freedom of association, as consolidated in Paragraph 1 of Article 35 of the Constitution, would be violated if the right of members of an association to decide on granting membership of the association were limited, *inter alia*, in the absence of a legitimate, universally significant, and constitutionally justifiable objective, or if this right were limited more than necessary in order to reach such an objective.

2.2.11. Freedom of assembly

Freedom of assembly (Article 36 of the Constitution)

The Constitutional Court's ruling of 7 January 2000

Article 36 of the Constitution prescribes:

“Citizens may not be prohibited or hindered from assembling unarmed in peaceful meetings.

This right may not be limited otherwise than by law and only when this is necessary to protect the security of the State or society, public order, the health or morals of people, or the rights or freedoms of other persons.”

The constitutional consolidation of the right of assembly means that this right is treated as one of fundamental human rights and values in a democratic society and that it is an inseparable element of the

democratic system. It is an important condition of the implementation of the striving for an open, just, and harmonious civil society and a state under the rule of law.

The right of assembly is the subjective right of citizens to participate in peaceful gatherings and to freely express their opinion and views; this right ensures the expression of the political activity of individuals in society and the state.

The Constitution is an integral act (Paragraph 1 of Article 6 of the Constitution); therefore, freedom of assembly should be treated not only as a democratic value to be taken for granted, but also as an important guarantee so that various constitutional rights and freedoms would be implemented in a fully fledged manner: the right of citizens to participate in the governance of their state (Paragraph 1 of Article 33 of the Constitution); the right of citizens to criticise the work of state institutions or their officials (Paragraph 2 of Article 33 of the Constitution); the right of everyone to have their own convictions and freely express them (Paragraph 1 of Article 25 of the Constitution); the right of everyone to seek, receive, or impart information or ideas (Paragraph 2 of Article 25 of the Constitution); the right of citizens to freely form societies, political parties, or associations (Paragraph 1 of Article 35 of the Constitution), etc. Thus, assembling in meetings is one of the ways of civil and political action.

Article 36 of the Constitution not only consolidates the right of citizens to assemble unarmed in peaceful meetings, but also formulates the grounds for a legal regulation governing the implementation of freedom of assembly; the same article guarantees the possibility of implementing this freedom without violating other values enshrined in the Constitution. This implies certain rights and duties of the subjects of the legal relationships linked with the arrangement and conduct of meetings – the organisers of meetings and the institutions and officials adopting decisions concerning the coordinated place, time, and form of a meeting.

On the one hand, the organisers of meetings may freely choose the place, time, purpose, and manner of meetings. If these rights were absent, freedom of assembly as such would lose its sense. At the same time, the organisers of meetings must take measures so that a meeting, as provided for in Paragraph 2 of Article 36 of the Constitution, would not undermine the security of the state or society, public order, the health or morals of people, or the rights or freedoms of other persons.

In their turn, the institution or official adopting decisions concerning the coordinated place, time, and form of a meeting must ascertain whether the meeting will not undermine the security of the state or society, public order, the health or morals of people, or the rights or freedoms of other persons. Coordinating the place of a meeting, the said institution or official must also assess whether the place in question is proper in order that the security of participants of the meeting would be ensured.

[...]

Regulating the implementation of the right of citizens, consolidated in Article 36 of the Constitution, to assemble only in unarmed and only in peaceful meetings, the legislature has discretion to establish the procedure for implementing this right; however, it may not deny the essence of freedom of assembly itself. The Constitutional Court notes that interference by the state with the exercise of freedom of assembly, as well as with the exercise of other rights and freedoms of individuals and citizens, is deemed to be lawful and necessary only in cases where the principle of proportionality between a particular limitation and the sought legitimate objective is observed. In all cases, a balance must be maintained between the rights of persons and the public interest. ...

Paragraph 2 of Article 36 of the Constitution provides that the right of citizens to assemble unarmed in peaceful meetings may not be limited otherwise than by law and only when this is necessary to protect the security of the state or society, public order, the health or morals of people, or the rights or freedoms of other persons. Thus, when establishing the procedure for implementing freedom of assembly, [the law] may define the limits of implementing this freedom: it may contain particularised requirements for the place, time, and form of meetings and it may stipulate what meetings are prohibited.

The requirements, established in the law, for the place, time, and form of meetings may not deny the provision of Paragraph 2 of Article 36 of the Constitution, by which the right to unarmed peaceful meetings may not be limited otherwise than by law and only when this is necessary to protect the security of the state

or society, public order, the health or morals of people, or the rights or freedoms of other persons. Similarly, when stipulating what meetings are prohibited, the legislature may not overstep the limits of implementing freedom of assembly as defined in Paragraph 2 of Article 36 of the Constitution. The list of prohibited meetings contained in [the law] must be exhaustive and may not be interpreted in an expansive manner. It is permitted to allow arranging such meetings that are not directly prohibited in [the law] provided that such meetings comply with the requirements for their place ... and their time ... as established in [the law].

2.3. POLITICAL RIGHTS AND FREEDOMS

2.3.1. The right of citizens to participate in the governance of their state

The right of citizens to directly participate in the governance of their state (Article 33 of the Constitution) (for more on referendums, see 2.3.2. The right to a referendum)

The Constitutional Court's ruling of 22 July 1994

The Constitution provides that sovereignty belongs to the Nation (Article 2). Citizens have the right to participate in the governance of their state both directly and through their freely elected representatives (Article 33). The direct participation of citizens in the governance of their state is a very important expression of their supreme sovereign power; therefore, a referendum must be a testimony to the actual will of the Nation.

The right of citizens to participate in the governance of their state (Paragraph 1 of Article 33 of the Constitution)

The Constitutional Court's ruling of 1 October 2008

Article 2 of the Constitution states that sovereignty belongs to the Nation. The Nation executes its supreme sovereign power either directly or through its democratically elected representatives (Article 4 of the Constitution). Paragraph 1 of Article 33 of the Constitution, *inter alia*, stipulates that citizens have the right to participate in the governance of their state both directly and through their democratically elected representatives. One of the fundamental characteristics of a democratic state is democratic elections to representative institutions of state power. It is through elections that every citizen implements his/her right to participate, together with other citizens, in the governance of his/her country (conclusion of 23 November 1996) and in the formation of the Seimas – the representation of the Nation.

The right of citizens to participate in the governance of their state through their democratically elected representatives (Paragraph 1 of Article 33 of the Constitution) (for more on the electoral rights, see 2.3.3. The electoral rights)

The Constitutional Court's ruling of 17 November 2011

Elections ... are a political process. The electoral rights (both active and passive ones) are closely related to the right of citizens of the Republic of Lithuania, consolidated in Article 33 of the Constitution, to participate in the governance of their state (ruling of 9 February 2007), which is implemented, *inter alia*, by participating in forming political representative institutions (ruling of 11 May 2011).

[...]

... to ensure the right of citizens to participate in the governance of their state, as consolidated in Paragraph 1 of Article 33 of the Constitution, *inter alia*, through democratically elected representatives, the legislature must create the preconditions for reflecting the will of voters, *inter alia*, the preconditions for ensuring the transparency of the electoral process and fair competition among subjects exercising their passive electoral right, as well as the publicity of information important to voters regarding those subjects.

2.3.2. The right to a referendum

Referendum ballot-papers must be printed only in the state language*The Constitutional Court's ruling of 10 May 2006*

Making the decisions of national importance, *inter alia*, when citizens of the Republic of Lithuania vote in referendums, during which, as established in Paragraph 1 of Article 9 of the Constitution, the most significant issues concerning the life of the State and the Nation are decided, is an exceptional sphere of the use of the state language. The knowledge of the state language is also a precondition for implementing the constitutional right of every citizen of the Republic of Lithuania to vote in referendums. The Constitution does not imply that citizens who do not know the state language must be provided with or can be provided with any special or facilitated conditions for participating in the governance of their country, *inter alia*, that such citizens must, in some way, be additionally or artificially encouraged to participate in referendums or other votes in which the decisions of national importance are made.

Due to this, referendum ballot-papers must be printed only in the state language. Otherwise, the constitutional concept of the state language, which presupposes precisely the use of the state language when making the decisions of national importance, would be ignored; in addition, the imperative of civic consciousness, which stems from the Constitution, and the concept of the national community – the civil Nation, which is established in the Constitution, would be deviated from.

Moreover, it is generally recognised that, in referendum ballot-papers, no matter on what issue the referendum is conducted, questions must be formulated in the manner ensuring that they would be understandable to every voter. ... it should be noted that, as regards the linguistic expression, these questions are not complicated or confusing and do not require voters to possess any special language knowledge. During referendums, voters are presented a certain question, which, from the linguistic point of view, is neither complicated nor confusingly formulated and must be answered only by “yes” or “no”. If there is more than one question, each question in a referendum ballot-paper must be formulated separately and every question must be answered separately. It is very doubtful whether a citizen who does not understand a question (questions) that is (are) formulated in such a simple way, notably because he/she does not know the state language, has enough information about the public life in the Republic of Lithuania so that he/she could make a rational decision how to answer a referendum question; in fact, most probably it would be impossible to argue that such a citizen (maybe with certain exceptions) is capable of understanding the goals of the Nation and is ready to take responsibility for the present and future of the State of Lithuania. Encouraging such citizens artificially or additionally so that they would participate in referendums or other votes during which the decisions of national importance are made (also creating possibilities for them to express their will not in the state language (which they do not know) during a referendum) would be, to a certain extent, equivalent to entrusting decision making on the respective issues of national significance to people who, as mentioned before, are not sufficiently integrated into the society of Lithuania, who are not fully fledged members of the national community – the civil Nation, who do not try to become such members, and who lack civic consciousness.

The constitutional imperative prescribing that it is not permitted to put to a referendum any such possible decisions that would not comply with the requirements of the Constitution*The Constitutional Court's ruling of 11 July 2014*

... in its ruling of 1 December 1994, the Constitutional Court held that the norms of the Constitution are equally binding on all legal subjects, including initiative groups for referendums and groups of citizens of any size. In its ruling of 22 July 1994, the Constitutional Court noted that the Seimas, as well as other participants of the legislation process, while drafting and adopting legal acts, must bring them in line with the Constitution; this is one of the main measures ensuring the constitutional order and one of the fundamental principles of a state under the rule of law; this rule must equally be observed by any group of citizens expressing an initiative to call a referendum; a draft law or the draft provisions of a law proposed to be put to a referendum must be brought in line with the Constitution.

... the Constitution is also binding on the national community – the civil Nation itself. In the context of the constitutional justice case at issue, it should be noted that all other legal subjects, *inter alia*, law-making subjects, institutions organising elections (referendums), initiative groups for referendums, as well as other groups of citizens, are equally bound by the Constitution and must observe and not violate the Constitution. In addition, it should be noted that the principle of the supremacy of the Constitution, *inter alia*, gives rise to the imperative that it is not permitted to put to a referendum any such possible decisions that would not comply with the requirements of the Constitution.

The most significant issues concerning the life of the State and the Nation are decided by referendum (Article 9 of the Constitution)

The Constitutional Court's ruling of 11 July 2014

According to Paragraph 1 of Article 9 of the Constitution, the most significant issues concerning the life of the State and the Nation are decided by referendum. Thus, under the Constitution, *inter alia*, issues that are important for the life of only some municipalities or some territorial or other communities of citizens may not be decided by referendum.

The most significant issues concerning the life of the State and the Nation are, first of all, the issues of altering the provisions of the Constitution, which, under the Constitution, may be decided only by referendum:

- under Paragraph 1 of Article 148 of the Constitution, the provision “The State of Lithuania shall be an independent democratic republic” of Article 1 of the Constitution may be altered only by referendum if not less than 3/4 of the citizens of Lithuania with the electoral right vote in favour thereof; it should be noted that only the same procedure may be applied to altering the provision “The State of Lithuania shall be an independent democratic republic” of Article 1 of the Constitutional Law on the State of Lithuania, which is a constituent part of the Constitution (Article 2 of the Constitutional Law on the State of Lithuania);

- the same procedure, as provided for in Article 2 of the Constitutional Law on the State of Lithuania, may be applied to altering the provisions of the Constitutional Act on the Non-Alignment of the Republic of Lithuania to Post-Soviet Eastern Unions, which is a constituent part of the Constitution (ruling of 24 January 2014), i.e. these provisions may be altered only in the case where “not less than three-fourths of the citizens of Lithuania with the active electoral right vote in favour”; as the Constitutional Court noted in its ruling of 24 January 2014, under the Constitution, the provisions of the Constitutional Act on the Non-Alignment of the Republic of Lithuania to Post-Soviet Eastern Unions should have the same protection as the provision “The State of Lithuania shall be an independent democratic republic”, which is consolidated in Article 1 of the Constitution and Article 1 of the Constitutional Law on the State of Lithuania;

- under Paragraph 2 of Article 148 of the Constitution, the provisions of the First Chapter “The State of Lithuania” and those of the Fourteenth Chapter “The Alteration of the Constitution” of the Constitution may be altered only by referendum;

- the provisions of Articles 1 and 2 of the Constitutional Act on Membership of the Republic of Lithuania in the European Union, which is a constituent part of the Constitution, may be altered only by referendum. As the Constitutional Court noted in its ruling of 24 January 2014, the Constitutional Act on Membership of the Republic of Lithuania in the European Union, *inter alia*, lays down the constitutional grounds for membership of the Republic of Lithuania in the European Union. If these constitutional grounds were not consolidated in the Constitution, the Republic of Lithuania would not be able to be a full member of the European Union: “The Republic of Lithuania as a Member State of the European Union shall share with or confer on the European Union the competences of its state institutions in the areas provided for in the founding Treaties of the European Union and to the extent it would, together with the other Member States of the European Union, jointly meet its membership commitments in those areas, as well as enjoy membership rights” (Article 1); “The norms of European Union law shall be a constituent part of the legal system of the Republic of Lithuania. Where it concerns the founding Treaties of the

European Union, the norms of European Union law shall be applied directly, while in the event of the collision of legal norms, they shall have supremacy over the laws and other legal acts of the Republic of Lithuania” (Article 2); these constitutional grounds for membership of the Republic of Lithuania in the European Union were consolidated in the Constitution so as to execute the will of the Nation that the Republic of Lithuania would be a member of the European Union; the aforesaid grounds themselves and the expression of the sovereign will of the Nation, as the source of these grounds, determine the requirement that the provisions of Articles 1 and 2 of the Constitutional Act on Membership of the Republic of Lithuania in the European Union may be altered or annulled only by referendum.

Under Paragraph 2 of Article 9 of the Constitution, the Seimas may call a referendum in the cases provided for in a law. Thus, in addition to those established in the Constitution, a law may provide for other most significant issues concerning the life of the State and the Nation that must be decided by referendum. It should be noted that, when establishing the list of such most significant issues concerning the life of the State and the Nation, the legislature is bound by the imperative, stemming from Paragraph 1 of Article 9 of the Constitution, that, under the Constitution, not all issues, but only the most significant issues concerning the life of the State and the Nation, must be decided by referendum and that issues generally not concerning the life of the State and the Nation may not be decided by referendum.

It should be noted that, in addition to those established in the Constitution or the law, there may be other most significant issues concerning the life of the State and the Nation that must be decided by referendum.

Under Paragraph 3 of Article 9 of the Constitution, a referendum is also called if not less than 300 000 citizens with the electoral right so request. The number of 300 000 citizens with the electoral right, who request that a particular issue be decided by referendum, shows that such an issue should be considered to be one of the most significant issues concerning the life of the State and the Nation. Thus, under the Constitution, the significance of a particular issue may also be determined by the fact that, as provided for by law, not less than 300 000 citizens with the electoral right request that it be decided by referendum: the most significant issues concerning the life of the State and the Nation, which must be decided by referendum, should also include such an issue that would be requested to be decided by referendum by not less than 300 000 citizens with the electoral right, although neither the Constitution nor any other law would indicate that this issue must be decided by referendum.

Under Article 4 of the Constitution, the Nation executes its supreme sovereign power, *inter alia*, through its democratically elected representatives; Item 3 of Article 67 of the Constitution stipulates that the Seimas adopts resolutions on referendums. It has been mentioned that, under the Constitution, only the Seimas is the representation of the Nation, through which the Nation executes its supreme sovereign power.

When interpreting the aforementioned provisions of the Constitution, it should be noted that, under the Constitution, the significance of a certain issue may also be determined by the fact that it is being put to a referendum by the Seimas, as the representation of the Nation: the most significant issues concerning the life of the State and the Nation, which must be decided by referendum, should also include such an issue that would be put to a referendum by the Seimas, as the representation of the Nation, although neither the Constitution nor any other law would indicate that this issue must be decided by referendum. It should be noted that, when a referendum is called by the Seimas on its own initiative, regard must be paid to the aforementioned imperative, stemming from Paragraph 1 of Article 9 of the Constitution, that, under the Constitution, issues generally not concerning the life of the State and the Nation may not be decided by referendum.

Adopting laws by referendum (Paragraph 4 of Article 69 of the Constitution)

The Constitutional Court's ruling of 11 July 2014

... under Paragraph 4 of Article 69 of the Constitution, the provisions of laws of the Republic of Lithuania may also be adopted by referendum.

Thus, the Seimas may, on its own initiative or at the request of not less than 300 000 citizens with the electoral right, call a referendum on the adoption of the provisions of a law (laws) that regulate a certain most significant issue concerning the life of the State and the Nation.

In this context, it should be noted that, under the Constitution, certain laws may not be adopted by referendum as, for instance:

- under Item 14 of Article 67 of the Constitution, the Seimas approves the state budget and supervises its execution; Article 130 of the Constitution provides that the Government draws up a draft state budget and presents it to the Seimas not later than 75 days before the end of the budget year; under Paragraph 1 of Article 131 of the Constitution, the draft state budget is considered by the Seimas and is approved by law before the start of the new budget year; as held in the Constitutional Court's ruling of 15 February 2013, the budgetary function of the Seimas is its classical function and it is one of the most important functions of the parliament of a democratic state under the rule of law;

- under Item 15 of Article 67 of the Constitution, the Seimas establishes state taxes and other compulsory payments; the Constitutional Court has held on more than one occasion that the Constitution consolidates the prerogative of the Seimas to establish taxes (rulings of 9 October 1998 and 15 March 2000, the decision of 20 September 2005, and the ruling of 16 December 2013), as well as that state taxes and other compulsory payments may be established only by the Seimas (rulings of 26 April 2001, 3 June 2002, and 17 November 2003);

- under Paragraph 3 of Article 69 of the Constitution, the Seimas establishes the list of constitutional laws by a 3/5 majority vote of the members of the Seimas; as held in the Constitutional Court's ruling of 1 December 1994, under the Constitution, the list of constitutional laws may be established only by the Seimas.

The constitutional imperative that preconditions must be created for determining the actual will of the Nation in a referendum (Articles 2 and 4 and Paragraph 1 of Article 9 of the Constitution)

The Constitutional Court's ruling of 11 July 2014

In its ruling of 22 July 1994, the Constitutional Court pointed out that the direct participation of citizens in the governance of their state is a very important expression of their supreme sovereign power; therefore, a referendum must be a testimony to the actual will of the Nation. In view of this fact, it should be noted that, where the most significant issues concerning the life of the State and the Nation are put to a referendum, they must be such issues regarding which it would be possible to determine the actual will of the Nation: *inter alia*, they must be formulated in a clear and not misleading manner. Thus, Paragraph 1 of Article 9 of the Constitution, when it is interpreted in conjunction with the provision of Article 2 of the Constitution that sovereignty belongs to the Nation and with the provision of Article 4 of the Constitution that the Nation executes its supreme sovereign power directly, gives rise to the imperative that preconditions must be created for determining the actual will of the Nation in a referendum.

Consequently, under the Constitution, several issues unrelated by their content and nature, or several unrelated amendments to the Constitution, or several unrelated provisions of laws may not be put to a vote in a referendum as a single issue. Acting otherwise would deny the possibility of determining the actual will of the Nation separately regarding each most significant issue concerning the life of the State and the Nation.

In this context, it should also be noted that, in cases where a referendum on certain most significant issues concerning the life of the State and the Nation is initiated pursuant to Paragraph 3 of Article 9 of the Constitution, under which a referendum is called if not less than 300 000 citizens with the electoral right so request, the approval of citizens for calling a referendum must be expressed separately regarding each issue being put to the referendum, i.e. a single signature may not be given in support of an initiative to call a referendum on several issues unrelated by their content and nature, or several unrelated amendments to the Constitution, or several unrelated provisions of laws. Otherwise, no possibility would be ensured for citizens to separately decide regarding their support for each initiative to call a referendum and it would be impossible to determine whether each of the aforementioned issues, which are unrelated by their content

and nature, is indeed requested to be put to a referendum by the subject indicated in Paragraph 3 of Article 9 of the Constitution – not less than 300 000 citizens with the electoral right.

Thus, the Constitution, *inter alia*, Paragraphs 1 and 3 of Article 9 thereof, gives rise to the duty of the legislature to establish, by means of a law, the requirement that several issues unrelated by their content and nature, or several unrelated amendments to the Constitution, or several unrelated provisions of laws may not be put to a referendum as a single issue.

Requirements for the law governing the calling and conduct of referendums (Paragraph 4 of Article 9 of the Constitution)

The Constitutional Court's ruling of 11 July 2014

Under Paragraph 4 of Article 9 of the Constitution, the procedure for calling and conducting referendums is established by law. Thus, by paying regard to the Constitution, the legislature must, by means of a law, establish a regulation governing issues related to calling and conducting referendums, *inter alia*, the rights and duties of the participants of the relationships connected with the organisation of referendums.

It should be noted that, as held by the Constitutional Court in its ruling of 1 December 1994, relationships arising in connection with the organisation of referendums are continuous legal relationships; the statement that the announcement of an initiative to organise a referendum already implies the beginning of the referendum is not justified; the formation of an initiative group, the collection of the signatures of citizens for organising a referendum, the submission of documents, as well as their verification and consideration are only certain obligatory actions during the stage of organising a referendum.

Under Paragraph 3 of Article 9 of the Constitution, one of the subjects who may exercise the initiative to call a referendum is not less than 300 000 citizens with the electoral right; thus, under Paragraph 4 of Article 9 of the Constitution, the formation of this subject and the announcement of the initiative to call a referendum, *inter alia*, the requirements for the content and form of an issue proposed to be decided by referendum, the requirements for the formation and registration of an initiative group of citizens for a referendum, as well as the requirements for the collection of signatures in support of calling a referendum and their submission to the institution organising referendums, must be regulated by means of a law.

It should be noted that, under the Constitution, another subject who may exercise the initiative to call a referendum is the Seimas: as mentioned before, under Paragraph 2 of Article 9 of the Constitution, in the cases established by means of a law, the Seimas may call a referendum; Item 3 of Article 67 of the Constitution stipulates that the Seimas adopts resolutions on referendums.

A law, *inter alia*, must establish the powers of the institution organising referendums, including the powers to ensure that the Constitution and laws are observed in the course of organising referendums, as well as the powers to register an initiative group of citizens for a referendum, to review the compliance of an issue proposed to be decided by referendum with the requirements established in relation to its content and form, to verify the number of the signatures of citizens obtained in favour of calling a referendum, to submit the respective conclusions to the institution calling referendums – the Seimas, to organise the conduct of referendums, as well as to determine and announce referendum results.

In this context, it should be noted that, in its decision of 11 July 1994, interpreting the provision of Item 13 of Article 67 of the Constitution, according to which the Seimas “shall form the Central Electoral Commission and alter its composition”, and having held in this context that the Nation executes its supreme sovereign power through two main organisational forms – national elections and referendums, the Constitutional Court noted that, in Lithuania, it is necessary to form one universal institution organising elections – the Central Electoral Commission; it was also held that the constitutional provision on the Central Electoral Commission must be implemented through the consolidation of the mission of this commission based on the respective constitutional provisions, as well as the consolidation of the principles of its formation and its competence, exclusively by means of a law.

In view of the fact that a referendum, as well as an election, is a form of the direct execution of the supreme sovereign power of the Nation, where citizens declare their will through a national vote, also that the right to initiate a referendum and to vote in a referendum is granted only to citizens who have the electoral right, as well as that referendums are conducted according to the principles of electoral law, it should be held that, under the Constitution, referendums must be organised by the institution *expressis verbis* specified in the Constitution – the Central Electoral Commission. Thus, the constitutional status of the Central Electoral Commission implies its certain powers, *inter alia*, the powers to oversee and take measures that subjects participating in the organisation and conduct of a referendum observe the Constitution and the requirements stemming from laws.

Under the Constitution, the institution calling referendums is the Seimas: under Item 3 of Article 67 of the Constitution, only the Seimas “shall adopt resolutions on referendums”.

As mentioned before, under Paragraph 4 of Article 9 of the Constitution, the procedure for calling referendums must be established by law. It should be noted that the wording of Item 3 of Article 67 of the Constitution implies not only the powers of the Seimas to adopt a resolution on calling a referendum, but also its powers to adopt a resolution on refusing to call a referendum on the grounds provided for by means of a law. It should be emphasised that the grounds, stemming from the Constitution, for adopting a resolution on refusing to call a referendum must be established by means of a law.

... the Constitution is supreme law; the supreme sovereign power of the Nation may be executed, *inter alia*, directly (by referendum), only in observance of the Constitution; all legal subjects, *inter alia*, law-making subjects, the institutions organising elections (referendums), initiative groups for referendums, as well as other groups of citizens, are bound by the Constitution and must observe and not violate the Constitution.

Thus, it is necessary to establish, by means of a law, such a legal regulation governing the relationships connected with the organisation of referendums under which preconditions would be created for ensuring that all participants of these relationships observe and not violate the Constitution and that the actual will of the Nation is expressed once a referendum is conducted. In this context, it should be noted that the principle of responsible governance, as consolidated in the Constitution, implies that all state institutions and officials are obliged to follow the Constitution and law while performing their functions and must properly implement the powers granted to them by the Constitution and laws by acting in the interests of the Nation and the State of Lithuania (conclusions of 26 October 2012 and 10 November 2012 and the ruling of 27 May 2014).

In view of the foregoing ... under the Constitution, the legislature must, by means of a law, establish, *inter alia*, the following:

- the requirements for the content and form of an issue submitted to a referendum, *inter alia*: the requirement, stemming from the principle of the supremacy of the Constitution, that a decision proposed to be put to a referendum must comply with the requirements stemming from the Constitution; the requirements, stemming from the constitutional imperative under which preconditions must be created for determining the actual will of the Nation in a referendum, that only such issues must be submitted to a referendum regarding which it would be possible to determine the actual will of the Nation (issues must be formulated in a clear and not misleading manner; they may not include several issues unrelated by their content and nature, or several unrelated amendments to the Constitution, or several unrelated provisions of laws);

- the requirement, stemming from the constitutional principles of a state under the rule of law and the supremacy of the Constitution, that an initiative group of citizens for a referendum must bring a decision proposed to be put to the referendum in line with the Constitution;

- the powers of the institution organising referendums – the Central Electoral Commission, which stem from the constitutional principles of a state under the rule of law, the supremacy of the Constitution, and responsible governance, to ensure that the Constitution and laws are observed in the course of organising referendums, *inter alia*: to verify whether an issue proposed to be decided by referendum complies with the requirements established in relation to the content and form of such issues and to refuse

to register an initiative group of citizens for a referendum if it fails to fulfil the duty to bring the decision proposed to be decided by referendum in line with the Constitution or if it proposes deciding by referendum an issue that does not meet other requirements established in relation to the content and form of such issues (*inter alia*, where an issue proposed to be decided by referendum is formulated in an unclear and misleading manner or where several issues unrelated by their content and nature are submitted as a single issue);

– the grounds, stemming from the Constitution, for the Seimas – the institution calling referendums – not to call a referendum. In this context, it should be noted that the constitutional principles of a state under the rule of law, the supremacy of the Constitution, and responsible governance give rise to the duty of the Seimas not to call a referendum where a decision proposed to be put to the referendum would not comply with the requirements stemming from the Constitution, *inter alia*, where an issue submitted to the referendum would be such regarding which it would be impossible to determine the actual will of the Nation (that issue would be unclear and misleading, or would include several issues unrelated by their content and nature, or several unrelated amendments to the Constitution, or several unrelated provisions of laws), or where the provisions of the law proposed to be put to the referendum would be in conflict with the Constitution, or where the proposed amendment to the Constitution would not comply with the requirements stemming from the Constitution.

[...]

... the legislature, when regulating the relationships connected with the organisation of referendums, must formulate legal norms in a clear and precise manner so that they would be understandable to the participants of the legal relationships connected with referendums. In this context, it should be noted that the requirement of legal certainty and clarity would be better complied with if [the law] explicitly [and not implicitly] established that the Central Electoral Commission is given the powers, stemming from the Constitution ... to assess whether a draft law proposed by citizens to be put to a referendum is in compliance with the Constitution, as well as that this commission is given the powers not to register, on the grounds of the said assessment, such an initiative group of citizens that proposes putting to a referendum a draft law not complying with the requirements stemming from the Constitution.

The duty of the Seimas not to call a referendum where a decision proposed to be put to the referendum does not comply with the requirements stemming from the Constitution

The Constitutional Court's ruling of 11 July 2014

... in its ruling of 22 July 1994, the Constitutional Court noted that the Constitution does not provide that the implementation of Article 9 of the Constitution, under which a referendum is called by the Seimas in cases provided for by law, as well as where a referendum is requested by not less than 300 000 citizens with the electoral right, may be bound by any additional conditions or by decisions of any subjects; Paragraph 1 of Article 3 of the Constitution stipulates that no one may restrict or limit the sovereignty of the Nation or arrogate to himself/herself the sovereign powers belonging to the entire Nation; the adoption of any preliminary decisions that are not provided for by the Constitution but determine the calling of a referendum would amount to the limitation of the supreme sovereign power of the Nation. It should be noted that ... in its ruling of 22 July 1994, the Constitutional Court did not consider the question whether the Constitution gives rise to any ground for the Seimas not to call a referendum where it is requested by not less than 300 000 citizens with the electoral right.

[...]

... the aforementioned statements from the Constitutional Court's ruling of 22 July 1994 may not be interpreted without taking account of other (both explicit and implicit) provisions of the Constitution that are related to the constitutional provisions during the interpretation of which the said statements were formulated, as well as of the entire official constitutional doctrinal context and the development of the official constitutional doctrine following the adoption of the ruling of 22 July 1994.

In this context, it should be noted that ... the principle of the supremacy of the Constitution is a fundamental requirement for a state under the rule of law; this principle means that the Constitution takes

an exceptional, the highest, place in the hierarchy of legal acts; no legal act may be in conflict with the Constitution; no one is permitted to violate the Constitution; the constitutional order must be defended. ... all provisions of the Constitution should be interpreted in view of the principle of the supremacy of the Constitution; all legal acts and the decisions of all state and municipal institutions and officials must comply with and not contradict the Constitution; the discretion of all law-making entities is limited by supreme law – the Constitution.

... since the Constitution also binds the national community – the civil Nation itself, the requirement that the Constitution must be observed when the Nation, *inter alia*, directly (by referendum), executes its supreme sovereign power may not, under Article 3 of the Constitution, be assessed as a restriction or limitation on the sovereignty of the Nation or as the taking over of the sovereign powers belonging to the entire Nation; the purpose of the provisions of Article 3 of the Constitution is to protect the constitutional values referred to in this article (sovereignty of the Nation, as well as the independence, territorial integrity, and constitutional order of the State of Lithuania); therefore, these provisions may not be invoked for the purpose of denying the said constitutional values; the provisions of Article 3 of the Constitution may not be interpreted, *inter alia*, in such a way that, purportedly, they imply the right of the Nation to disregard the Constitution, which has been adopted by the Nation itself, or the right of any citizen or any group of citizens to equate themselves with the Nation and act on behalf of the Nation while seeking to violate the aforementioned constitutional values.

Consequently, the requirement that the Constitution be observed may not be regarded as an additional condition, which is not provided for in the Constitution, for calling a referendum, and which would be binding in the event of implementing Article 9 of the Constitution. It should be emphasised that the said requirement stems from the Constitution itself, *inter alia*, the principle of the supremacy of the Constitution, as consolidated in Paragraph 1 of Article 7 of the Constitution, and the constitutional principle of a state under the rule of law. If the Constitution were interpreted in a different way, i.e. purportedly that the Seimas is obliged to call a referendum even where a decision proposed to be put to the referendum does not comply with the requirements stemming from the Constitution, preconditions would be created for the denial of constitutional principles and the Constitution itself, as supreme law and the legal foundation for the common life of the Nation.

As mentioned before, the Constitution equally binds the national community – the civil Nation itself; when the Constitution is interpreted, it is not allowed to create opposition between the direct (through a referendum) and indirect (through the representation of the Nation – the Seimas) forms of the execution of the supreme sovereign power of the Nation. Thus, it should also be emphasised that the duty of the Seimas, stemming from the Constitution, not to call a referendum where a decision proposed to be put to the referendum would not comply with the requirements stemming from the Constitution may not be regarded as the power of the Seimas to adopt a preliminary decision that is not provided for in the Constitution but determines the calling of a referendum, i.e. which limits the supreme sovereign power of the Nation. The provision “Sovereignty shall belong to the Nation” of Article 2 of the Constitution, the provision “The Nation shall execute its supreme sovereign power ... directly” of Article 4, as well as the provision “The most significant issues concerning the life of the State and the Nation shall be decided by referendum” of Article 9 of the Constitution, may not be interpreted only literally: these provisions do not mean that the Nation may, by referendum, establish, *inter alia*, in the Constitution, any legal regulation it requests, including a legal regulation not complying with the requirements stemming from the Constitution.

[...]

As mentioned before, Item 3 of Article 67 of the Constitution stipulates that the Seimas adopts resolutions on referendums. It has been mentioned that the wording of Item 3 of Article 67 of the Constitution implies not only the powers of the Seimas to adopt a resolution on calling a referendum, but also its powers to adopt a resolution on refusing to call a referendum on the grounds provided for by means of a law; the grounds provided for by means of a law for adopting a resolution on refusing to call a referendum must stem from the Constitution.

In this context, it should be noted that, under Item 3 of Article 67 of the Constitution, the Seimas is obliged to adopt a resolution both in the case where it decides to call a referendum, as well as in the case where it decides not to call a referendum. Under Paragraph 1 of Article 102 and Paragraph 1 of Article 105 of the Constitution, a resolution of the Seimas to call a referendum or not to call a referendum may be an object of constitutional review. Under Paragraph 1 of Article 106 of the Constitution, the Government, not less than 1/5 of all the members of the Seimas, and courts have the right to apply to the Constitutional Court concerning the aforesaid acts (resolutions to call or not to call a referendum) of the Seimas; systemically interpreting Paragraphs 1 and 4 of Article 106 of the Constitution, it should be noted that the right to apply to the Constitutional Court and request an investigation into the compliance of a resolution of the Seimas with the Constitution is also granted to the Seimas *in corpore*.

In this context, it should also be noted that, in interpreting Paragraph 1 of Article 102 of the Constitution in the context of the constitutional legal regulation, the Constitutional Court has held on more than one occasion that, under the Constitution, the Constitutional Court has the exclusive competence to investigate and decide, *inter alia*, whether any act (part thereof) adopted by referendum is in conflict with any higher-ranking act, *inter alia* (and, first of all), with the Constitution (rulings of 28 March 2006, 6 June 2006, 24 October 2007, and 13 May 2010).

The requirements stemming from the Constitution for the alteration of the Constitution by referendum (on the limitations on the alteration of the Constitution, see 1. The foundations of the constitutional order, 1.8. The foundations of lawmaking and of the application of law, 1.8.4. The hierarchy of legal acts, 1.8.4.2. The Constitution, 1.8.4.2.4. Amendments to the Constitution and the stability of the Constitution, the rulings of 24 January 2014 and 11 July 2014)

The Constitutional Court's ruling of 11 July 2014

... the substantive limitations imposed on the alteration of the Constitution are equally applicable in the event of the alteration of the Constitution by referendum. It has been mentioned that the principle of the supremacy of the Constitution, *inter alia*, gives rise to the imperative according to which it is not permitted to put to a referendum any such possible decisions that would not comply with the requirements stemming from the Constitution. Thus, according to the Constitution, it is also not permitted to put to a referendum any such a draft amendment to the Constitution that disregards the substantive limitations set on the alteration of the Constitution. Otherwise, the preconditions would be created for denying the principle of the supremacy of the Constitution and for disregarding the imperative, stemming from Paragraph 1 of Article 6 of the Constitution, that no amendments to the Constitution may violate the harmony of the provisions of the Constitution and the harmony of the values consolidated in these provisions.

It has been mentioned that, under the Constitution, a law, *inter alia*, must establish the requirement, stemming from the constitutional principles of a state under the rule of law and the supremacy of the Constitution, that an initiative group of citizens for a referendum must bring a decision proposed to be put to the referendum in line with the Constitution. This requirement, *inter alia*, gives rise to the duty of an initiative group of citizens for a referendum to submit to the referendum only such draft amendments to the Constitution that would observe the substantive limitations, stemming from the Constitution, on the alteration of the Constitution.

It has been mentioned that, under the Constitution, a law, *inter alia*, must establish the powers of the institution organising referendums – the Central Electoral Commission, which derive from the constitutional principles of a state under the rule of law, the supremacy of the Constitution, and responsible governance, to review whether an issue proposed to be decided by referendum complies with the requirements set in relation to the content and form of such an issue and to refuse to register an initiative group of citizens for a referendum where such a group fails to fulfil the duty to bring a decision proposed to be put to the referendum in line with the Constitution. These powers, *inter alia*, imply the duty of the Central Electoral Commission not to register such an initiative group of citizens for a referendum that

proposes putting to the referendum such a draft amendment to the Constitution that disregards the substantive limitations, stemming from the Constitution, on the alteration of the Constitution.

It has been mentioned that the constitutional principles of a state under the rule of law, the supremacy of the Constitution, and responsible governance give rise to the duty of the Seimas not to call a referendum where a decision proposed to be put to the referendum does not comply with the requirements stemming from the Constitution. Thus, under the Constitution, a law must lay down a ground for the institution calling referendums – the Seimas – not to call a referendum where a decision proposed to be put to the referendum would not comply with the requirements stemming from the Constitution. This ground, *inter alia*, also includes cases where a draft amendment submitted to a referendum disregards the substantive limitations, stemming from the Constitution, on the alteration of the Constitution.

The requirement that the same procedure for calling and conducting referendums be applied in deciding all the most significant issues concerning the life of the State and the Nation (Paragraph 1 of Article 9 of the Constitution)

The Constitutional Court's ruling of 15 February 2019

... under Paragraph 1 of Article 9 of the Constitution, irrespective of whether they are specified in the Constitution or a law as issues that must be decided by referendum, or whether, although they are not specified in the Constitution or a law, they are put to a referendum by 300 000 citizens with the electoral right or by the Seimas as the representation of the Nation, all [such] issues should be regarded as the most significant issues concerning the life of the State and the Nation; such issues are not differentiated in Paragraph 1 of Article 9 of the Constitution. Therefore, the Constitution, *inter alia*, Paragraph 1 of Article 9 thereof, gives rise to the requirement that the same procedure for calling and conducting referendums be applied in deciding all the most significant issues concerning the life of the State and the Nation, with the exception of the special requirements provided for in the Constitution with regard to adopting decisions on certain of the most significant issues concerning the life of the State and the Nation (e.g. under Paragraph 1 of Article 148 of the Constitution, in order to amend the provision “The State of Lithuania shall be an independent democratic republic” of Article 1 of the Constitution, it is required that not less than 3/4 of the citizens of Lithuania with the electoral right vote in favour thereof; under Article 2 of the Constitutional Law on the State of Lithuania, the provision “The State of Lithuania shall be an independent democratic republic” of Article 1 of this constitutional law may be amended by following the same procedure).

The democratic principles governing elections to political representative institutions (universal, equal, and direct suffrage, secret ballot, free and fair elections, a transparent and public electoral process) must be applied to calling and conducting referendums

The Constitutional Court's ruling of 15 February 2019

... Paragraph 1 of Article 9 of the Constitution does not *expressis verbis* set out the requirements how the most significant issues concerning the life of the State and the Nation must be decided by referendum.

However ... referendums, as well as elections, constitute a form of the direct execution of the supreme sovereign power of the Nation; national elections and referendums are based on the same constitutional grounds, *inter alia*, the sovereignty of the Nation, democracy, and the electoral rights, as laid down, *inter alia*, in Articles 2 and 4, Paragraph 1 of Article 33, and Article 34 of the Constitution. Thus, Paragraph 1 of Article 9 of the Constitution, interpreted in the context of the provisions of Articles 2 and 4, Paragraph 1 of Article 33, and Article 34 of the Constitution, gives rise to the imperative that the constitutionally consolidated democratic principles governing elections to political representative institutions (universal, equal, and direct suffrage, secret ballot, free and fair elections, a transparent and public electoral process) be *mutatis mutandis* applied to calling and conducting referendums. It should be noted that ... these principles stem, *inter alia*, from the imperatives implied by the constitutional principle of a state under the rule of law and should be interpreted by taking into account these imperatives.

It needs to be emphasised that, arising from the Constitution, the above-mentioned imperative that the constitutionally consolidated democratic principles governing elections to political representative institutions be *mutatis mutandis* applied to calling and conducting referendums is not an objective in itself. As the Constitutional Court held in its ruling of 11 July 2014, Paragraph 1 of Article 9 of the Constitution, interpreted in conjunction with the provision of Article 2 of the Constitution that sovereignty belongs to the Nation and with the provision of Article 4 of the Constitution that the Nation executes its supreme sovereign power directly, gives rise to the imperative to create the preconditions for determining the actual will of the Nation in a referendum. Thus, compliance with the above-mentioned constitutionally consolidated democratic principles governing elections to political representative institutions is a *conditio sine qua non* in order to create the preconditions for determining the actual will of the Nation in a referendum.

Consequently, under Paragraph 1 of Article 9 of the Constitution, in exercising its powers, established in Paragraph 4 of this article, to regulate the procedure for calling and conducting referendums, the legislature is bound by the democratic principles governing elections to political representative institutions. Otherwise, if the provision of Paragraph 1 of Article 9 of the Constitution were interpreted only literally by applying solely the linguistic method of the interpretation of law, such an interpretation would deny the above-mentioned constitutional imperative to create the preconditions for determining the actual will of the Nation in a referendum.

In view of this, it should be noted that, under Paragraph 1 of Article 9 of the Constitution, conducting a referendum is subject, *inter alia*, to the principles of universal, equal, and direct suffrage.

Thus, under the Constitution, a referendum must be conducted on the basis, *inter alia*, of universal suffrage, i.e. by creating the preconditions for the participation in a referendum of all citizens with an active electoral right under Article 34 of the Constitution (i.e. those who, on the day of the referendum, have reached 18 years of age and have not been declared by a court to be legally incapacitated).

Under the Constitution, a referendum must also be conducted on the basis of equal suffrage. With regard to the principle of equal suffrage, it is universally recognised that this principle, *inter alia*, means that, in the course of organising and conducting elections, all voters must be treated equally, as well as that the vote of each voter is equal to the vote of any other voter and has equal weight when the results of voting are established (ruling of 1 October 2008). Thus, as in the case of elections, all citizens who can participate in a referendum must be treated in the same way and as having equal votes.

Under the Constitution, a referendum must also be conducted by having regard to the principle of direct suffrage, which requires a vote without mediators in a referendum. Interpreting the content of this principle, the Constitutional Court has held that the legislature, while regulating electoral relationships, may not establish such a legal regulation that would create the preconditions for a different person to cast a vote for the voter (except where the voter is unable to implement such his/her constitutional right by himself/herself for health reasons) (conclusion of 5 November 2004). This requirement applies to the legal regulation governing the relationships connected with referendums.

It should be noted that, under Paragraph 1 of Article 9 of the Constitution, conducting a referendum is subject, *inter alia*, to the principle of secret ballot.

As held by the Constitutional Court in its ruling of 1 October 2008, according to the principle of secret ballot, such conditions for expressing the will of voters during voting must be created under which nobody could control voters, influence their choice, or otherwise impede the free and unrestricted expression of their will.

Under Paragraph 1 of Article 9 of the Constitution, conducting a referendum is *mutatis mutandis* subject, *inter alia*, to the principle of free and fair elections. It should be noted that this principle should be interpreted by taking into account, *inter alia*, the imperative of fairness, which is implied by the constitutional principle of a state under the rule of law. As held by the Constitutional Court, under the Constitution, the subjects of legal relationships are under the duty to behave in good faith and without violating law; this is required by the general legal principle of *bona fides*, which is inseparable from the constitutional principle of a state under the rule of law (rulings of 27 June 2007 and 6 September 2007).

Thus, under the Constitution, *inter alia*, Paragraph 1 of Article 9 thereof, and the constitutional principle of a state under the rule of law, it is obligatory to ensure a fair referendum process, *inter alia*, the free expression of will by citizens. This, *inter alia*, means that it is obligatory to create the preconditions enabling citizens, freely and without being subjected to control, to form their opinion and express their will on the issue put to a referendum, as well as to create the equal opportunities to campaign for both proponents and opponents of the decision put to a referendum; the imperative of a fair referendum process also implies the following requirements: the institution organising referendums (Central Electoral Commission) must be impartial; the institution calling referendums (Seimas) may not influence the referendum results while exercising these powers; the institution calling referendums, the institution organising referendums, and other state institutions may not abuse the powers conferred on them.

As mentioned before, the Constitution, *inter alia*, Paragraph 1 of Article 9 thereof, gives rise to the requirement that the same procedure for calling and conducting referendums be applied in deciding all the most significant issues concerning the life of the State and the Nation, with the exception of the special requirements provided for in the Constitution with regard to adopting decisions on certain of the most significant issues concerning the life of the State and the Nation. It should be noted that this requirement also arises from the constitutional imperative of a fair referendum process, under which, while remaining as neutral as possible, state institutions may not, selectively by their decisions, encourage or, on the contrary, hinder decision making in a referendum on certain of the most significant issues concerning the life of the State and the Nation once such issues are put to a referendum.

Under Paragraph 1 of Article 9 of the Constitution, conducting a referendum is also subject, *inter alia*, to the principle of a transparent and public referendum process. It should be noted that this principle implies the requirement that the publicity of meaningful information about the referendum must be ensured where such information is significant to citizens, as well as the requirement that citizens must be properly informed about the decision put to the referendum and about the arguments of the proponents and opponents of the decision.

It should also be noted that the principle of a transparent and public referendum process should be interpreted in the light, *inter alia*, of the requirements implied by the constitutional principle of a state under the rule of law, *inter alia*, the requirements for the implementation of the powers of state authorities and officials. The Constitutional Court has held that transparency, as a principle of the activity of public authorities and officials, implies, among other things, that decisions taken must be reasoned and clear (*inter alia*, the rulings of 22 January 2008, 2 March 2018, and 12 April 2018). In view of this, the principle of a transparent and public referendum process implies the requirement that the institution calling referendums and the institution organising referendums must take reasonable, clear, and public decisions in relation to calling and conducting referendums.

In this context, it should also be noted that the above-mentioned principles of a fair, transparent, and public referendum process should be interpreted in the light, *inter alia*, of the imperative (implied by the constitutional principle of a state under the rule of law) of legal certainty and clarity for a legal regulation. As more than once held by the Constitutional Court, legal certainty and legal clarity are among the essential elements of the principle of a state under the rule of law, which is consolidated in the Constitution; a legal regulation must be clear and harmonious; legal norms must be formulated precisely and they may not contain ambiguities. It needs to be emphasised that, in the light of the constitutional principle of a state under the rule of law and in order to create the preconditions for ensuring a fair and transparent referendum process, the procedure for calling and conducting referendums, established by means of a law in accordance with Paragraph 4 of Article 9 of the Constitution, must also be clear and precise.

The requirement that, once a referendum is called, it must be provided that it is to take place on one day (Paragraphs 1 and 4 of Article 9 and Item 3 of Article 67 of the Constitution)

The Constitutional Court's ruling of 15 February 2019

... the Constitution, *inter alia*, Article 9 thereof, does not explicitly establish how many days may be scheduled for a referendum once it is called.

[...]

... Paragraph 1 of Article 9 of the Constitution, interpreted in the context of the provisions of Articles 2 and 4, Paragraph 1 of Article 33, and Article 34 thereof, gives rise to the imperative that the constitutionally consolidated democratic principles (stemming, *inter alia*, from the constitutional principle of a state under the rule of law) governing elections to political representative institutions be *mutatis mutandis* applied to calling and conducting referendums. It should be noted that there are no constitutional grounds for applying other principles in regulating, by means of a law, as to how many days may be scheduled for a referendum once it is called.

[...]

It should be held that Article 57, Paragraph 4 of Article 58, Article 80, Paragraphs 2 and 3 of Article 81, Paragraph 1 of Article 87, and Paragraph 1 of Article 89 of the Constitution establish the requirement that elections to the Seimas and the elections of the President of the Republic must last one day (i.e. the provision is made that regular elections are held on the specific date), which must be a Sunday.

It should be emphasised that, under the Constitution, such a requirement is not an objective in itself. As the Constitutional Court held in its ruling of 19 September 2002, the provision of Article 1 of the Constitution that the State of Lithuania is an independent democratic republic, *inter alia*, means that free and periodic elections and the democratic process of decision making must be ensured in the state; this provision embodies the constitutional obligation not to deviate from the requirements of democracy; the said obligation is applicable to all state institutions, including the legislature. One of the essential characteristics of a democratic state is democratic elections to representative institutions of state power (*inter alia*, the conclusions of 23 November 1996 and 7 November 2008 and the ruling of 29 March 2012).

In view of this, it should be noted that the above-mentioned constitutional requirement that elections to the Seimas and the elections of the President of the Republic must last one day (i.e. the Constitution makes the precise provision for the specific date for regular elections and the procedure for determining the day of repeat or early elections) is aimed at ensuring the implementation of a necessary condition of democracy – free and periodic elections and the democratic process of decision making during elections. Establishing, in the Constitution, the precise day for regular elections and limiting, under the Constitution, the discretion to choose the day and duration of repeat or early elections precludes the state authority institutions that, under the Constitution, are vested with the powers to call elections from abusing these powers, *inter alia*, from influencing the election results while exercising the said powers. At the same time, this constitutes one of the preconditions for ensuring the fairness and transparency of the electoral process and revealing the actual will of voters in elections.

To sum up, it should be noted that, arising from Paragraph 1 of Article 9 of the Constitution, which should be interpreted in the context of Articles 2 and 4, Paragraph 1 of Article 33, and Article 34 of the Constitution, the imperative that the constitutionally consolidated democratic principles governing elections to political representative institutions (and stemming, *inter alia*, from the constitutional principle of a state under the rule of law) be *mutatis mutandis* applied to calling and conducting referendums also implies, *inter alia*, the requirement that, once a referendum is called, it must be provided that it is to take place on one day (by analogy with elections to the Seimas and the elections of the President of the Republic, usually on a Sunday). Such a requirement is aimed at ensuring, in a referendum, the democratic process of decision making, which ... is implied by the provision of Article 1 of the Constitution, proclaiming that the State of Lithuania is an independent democratic republic. It should also be noted that such a requirement creates the preconditions for ensuring the fairness and transparency of the referendum process, *inter alia*, ensuring that the same procedure for calling and conducting referendums is applied in deciding all the most

significant issues concerning the life of the State and the Nation; at the same time, the preconditions are created for ensuring the imperative, stemming from Paragraph 1 of Article 9 of the Constitution, to determine the actual will of the Nation in a referendum.

... according to Paragraph 4 of Article 9 of the Constitution, the legislature must establish the procedure for calling and conducting referendums while having regard to the requirements arising from the Constitution, *inter alia*, Paragraph 1 of Article 9 thereof. ... in the light of the constitutional principle of a state under the rule of law and in order to create the preconditions for a fair and transparent referendum process, the procedure for calling and conducting referendums established by means of a law in accordance with Paragraph 4 of Article 9 of the Constitution must also be clear and precise.

Thus, Paragraphs 1 and 4 of Article 9 of the Constitution and the constitutional principle of a state under the rule of law give rise to the requirement for the legislature, in regulating the procedure for calling and conducting referendums, *inter alia*, to prescribe that, once a referendum is called, it is permitted to provide that the referendum is to take place on only one day.

At the same time, it should be noted that, according to Item 3 of Article 67 of the Constitution, the Seimas “shall adopt resolutions on referendums”.

Thus, Item 3 of Article 67 of the Constitution, *inter alia*, implies that, having regard to the Constitution, *inter alia*, Paragraph 1 of Article 9 thereof, and the requirements stemming from the Constitution and the constitutional principle of a state under the rule of law, the Seimas is under the duty to provide, in its resolution on calling a referendum, for the date of the referendum, i.e. to provide that the referendum is to take place on one day.

The duty of the legislature to establish the procedure for early voting in referendums for citizens who are unable to cast their votes on the day of a referendum (Paragraphs 1 and 4 of Article 9 of the Constitution)

The Constitutional Court’s ruling of 15 February 2019

... the requirement, arising from Paragraph 1 of Article 9 of the Constitution, that, once a referendum is called, it must be provided that it is to take place on one day may not be interpreted as preventing the legislature from establishing the procedure for early voting in referendums for those citizens who are unable to cast their votes on the day of a referendum. It should be emphasised that providing for the procedure for early voting in referendums is a constitutional duty of the legislature; it stems from the Constitution, *inter alia*, Paragraphs 1 and 4 of Article 9 thereof.

In this context, it should be mentioned that, in its ruling of 1 December 1994, the Constitutional Court held that a referendum (i.e. voting by citizens) is conducted on the date specified in the resolution of the Seimas and at the time prescribed by the law; citizens participate in a referendum earlier than on the designated voting day only in the cases and according to the procedure provided for under the law when they vote by mail.

... Paragraph 1 of Article 9 of the Constitution gives rise to the imperative that the constitutionally consolidated democratic principles governing elections to political representative institutions be *mutatis mutandis* applied to calling and conducting referendums; in exercising its powers, established in Paragraph 4 of the said article, to regulate the procedure for calling and conducting referendums, the legislature is bound by the democratic principles governing elections to political representative institutions. In this context, it should be noted that, when revealing the requirements that are implied by the democratic principles governing elections to political representative institutions, *inter alia*, the principle of personal (direct) voting, and that are to be followed by the legislature in establishing the electoral legal regulation, the Constitutional Court has stated that the constitutional imperative of democratic elections means the requirement to ensure the possibility of expressing will in elections for those voters who, on the scheduled day, are unable to arrive at the polling station due to illness, disability, imprisonment, the performance of official tasks, as well as due to a travel or other personal reasons; the legislature has the constitutional duty to establish such a legal regulation that gives citizens who are unable to vote on the day

of the election the possibility of implementing their constitutional right at another time (conclusion of 5 November 2004).

Constitutional laws, except for the constitutional law establishing the list of constitutional laws, may be adopted and amended by referendum

See 1.8. The foundations of lawmaking and of the application of law, 1.8.4. The hierarchy of legal acts, 1.8.4.4. Constitutional laws, the ruling of 30 July 2020.

2.3.3. The electoral rights

The requirement that candidates for members of the Seimas must not be bound by an oath or a pledge to a foreign state (Paragraph 1 of Article 56 of the Constitution)

The Constitutional Court's ruling of 11 November 1998

The requirement of Paragraph 1 of Article 56 of the Constitution stipulating that candidates for members of the Seimas must not be bound by an oath or a pledge to a foreign state must, first of all, be interpreted on the basis of Paragraph 2 of Article 59 of the Constitution, which provides that “An elected Member of the Seimas ... [takes] an oath ... to be faithful to the Republic of Lithuania”. Paragraph 3 of the same article contains another important provision, which reads: “A Member of the Seimas who either does not take the oath according to the procedure established by law or takes a conditional oath shall lose the mandate of a Member of the Seimas.” Thus, the Constitution unconditionally requires that a member of the Seimas must take an oath to be faithful only to the State of Lithuania and that he/she must take the pledge to respect and execute its Constitution and laws. This is understandable, since only persons who are loyal to their state and where no doubts arise concerning the loyalty and reliability of such persons may work in the institutions of their state. It is obvious that, in cases where a person who is bound by an oath or a pledge to a foreign state takes the oath of a member of the Seimas, doubts might arise as to the certainty and credibility of his/her oath, and the legal and political situation of such a person would become ambiguous.

[...]

In the context of the case at issue, it is necessary to interpret the content of the constitutional notion “who is not bound by an oath or a pledge to a foreign state”. First of all, it must be emphasised that this notion is of an abstract nature, i.e. it should be understood as any oath or pledge to a foreign state. Second, interpreting this notion, it is necessary to remember the main objectives due to which this notion (together with other conditions) was laid down in the Constitution. These are essentially political objectives: to ensure the proper formation of the supreme political state institution, which embodies the idea of the representation of the legal nation in the state. It is obvious that the nation is represented only by the citizens of that state who are aware and capable of expressing the expectations and interests of their fellow citizens and who comprehend and are capable of forming the political will of their state. Thus, any commitments of a political nature to a foreign state where they arise out of a formally taken oath or pledge or where they occur as a political duty or a political loyalty requirement linked with the fact of holding citizenship of another state are to be treated as a pledge to a foreign state. The Constitutional Court emphasises that the best way to meet the constitutional condition, i.e. to be a person “who is not bound by an oath or a pledge to a foreign state”, is the renunciation of citizenship of a foreign state. The legislature, implementing such content of the aforesaid constitutional norm, may also establish additional requirements for the implementation of that constitutional norm.

The active and passive electoral rights of the permanent residents of an administrative unit in elections of municipal councils (Paragraph 2 (wording of 20 June 2002) of Article 119 of the Constitution)

See 10. Local self-government and governance, 10.2. Local self-government, the ruling of 24 December 2002.

Requirements for persons eligible to stand for election as the President of the Republic (Paragraph 2 of Article 34 and Paragraph 1 of Article 78 of the Constitution)

The Constitutional Court's ruling of 25 May 2004

Paragraph 1 of Article 78 of the Constitution provides that a Lithuanian citizen by descent who has lived in Lithuania for not less than the last three years, provided that he/she has reached the age of not less than 40 prior to the election day and may stand for election as a member of the Seimas, may stand for election as the President of the Republic. Under Paragraph 1 of Article 56 of the Constitution, any citizen of the Republic of Lithuania who is not bound by an oath or a pledge to a foreign state and who, on the election day, is not younger than 25 years of age and permanently resides in Lithuania may stand for election as a member of the Seimas. Paragraph 2 of this article provides that persons who have not served punishment imposed by a court judgment, as well as persons declared by a court to be legally incapacitated, may not stand for election as a member of the Seimas. According to Paragraph 1 of Article 79 of the Constitution, any citizen of the Republic of Lithuania who meets the conditions set out in Paragraph 1 of Article 78 and collects the signatures of not less than 20 000 voters is registered as a presidential candidate.

[...]

As mentioned before, under Paragraph 1 of Article 78 of the Constitution, a citizen of the Republic of Lithuania who, *inter alia*, may stand for election as a member of the Seimas, may stand for election as the President of the Republic. Since, under the Constitution, judges and the persons specified in Article 141 of the Constitution have no right to stand for election as members of the Seimas as long as they hold a particular office, they may not stand for election as the President of the Republic, either.

Under Paragraph 3 of Article 104 of the Constitution, the limitations established on work and political activities for the judges of courts also apply to the justices of the Constitutional Court. Thus, the constitutional limitation on standing for election as a member of the Seimas and as the President of the Republic also applies to the justices of the Constitutional Court.

Paragraph 2 of Article 34 of the Constitution prescribes: "The right to stand for election shall be established by the Constitution of the Republic of Lithuania and by the election laws."

If Paragraph 2 of Article 34 of the Constitution is interpreted only literally by applying the linguistic method of the interpretation of law, it would be possible to state that it is also allowed to establish in the election laws ... such requirements (conditions) for a person who may stand for election as the President of the Republic that are not provided for in the Constitution itself.

[...]

... the requirements for a person who may stand for election as the President of the Republic are established in the Constitution. Consequently, the provision "The right to stand for election shall be established ... by the election laws" of Paragraph 2 of Article 34 of the Constitution means that, under the Constitution, the legislature has the powers to establish in the election laws ... such requirements (conditions) for a person who may stand for election as the President of the Republic that are constitutionally justifiable. ... [the law] may not establish any such requirements (conditions) that would distort or deny the requirements (conditions) established in the Constitution for a person who may stand for election as the President of the Republic. The provision "The right to stand for election shall be established ... by the election laws" of Paragraph 2 of Article 34 of the Constitution also means that ... the procedure of the election of the President of the Republic, the procedures for the implementation of the right of a person to stand for election as the President of the Republic, etc. should be regulated under the election laws. A different interpretation of the provisions of Paragraph 2 of Article 34 of the Constitution would make legally meaningless the constitutional legal regulation that establishes the requirements (conditions) for a person who may stand for election as the President of the Republic because, if laws established a different legal regulation competing with the constitutional regulation, the

constitutional norms and principles establishing the said requirements (conditions) and bearing the supreme legal force would be denied. This would be inconsistent with the principle of the supremacy of the Constitution, with the provision of Paragraph 1 of Article 6 of the Constitution, whereby the Constitution is a directly applicable legal act, and with Paragraph 1 of Article 7 of the Constitution, under which any law or other act that contradicts the Constitution is invalid.

[...]

Thus, according to the Constitution, a person who is a citizen of the Republic of Lithuania by descent, has lived in Lithuania for not less than the past three years, provided that he/she has reached the age of not less than 40 prior to the election day, and is not bound by an oath or a pledge to a foreign state may stand for election as the President of the Republic. Under the Constitution, a person may not stand for election as the President of the Republic if he/she has been the President of the Republic twice consecutively (for two consecutive terms). Under the Constitution, a person who has not served punishment imposed by a court judgment, as well as a person declared by a court legally incapacitated, may not stand for election as the President of the Republic, either. Under the Constitution, a person who has been removed from office or whose mandate of a member of the Seimas has been revoked according to the procedure for impeachment proceedings for a breach of the oath, a gross violation of the Constitution, or a crime by which the Constitution was grossly violated and the oath was breached may never stand for election as the President of the Republic. Under the Constitution, a judge of any court or a person holding the office specified in Article 141 of the Constitution may not stand for election as the President of the Republic.

Under the Constitution, a person who meets the established constitutional requirements (if no obstacles defined in the Constitution exist) for being registered as a candidate for the post of the President of the Republic must additionally collect the signatures of not less than 20 000 voters.

It needs to be stressed that the Constitution does not provide for any other requirements (conditions) that should be met by a person so that he/she would be eligible to stand for election as the President of the Republic. Under the Constitution, laws and other legal acts may not establish any such requirements (conditions) applicable to a person so that he/she would be eligible to stand for election as the President of the Republic that would distort or deny the requirements (conditions) established in the Constitution.

Requirements for the legal regulation governing the election of the members of the Seimas (Paragraphs 1 and 3 of Article 55 of the Constitution)

The Constitutional Court's conclusion of 5 November 2004

... the principles of elections to the Seimas, the representation of the Nation, are established in the Constitution; it is not permitted to deny, distort, or limit them by means of any lower-ranking legal act. Under Paragraph 1 of Article 55 of the Constitution, the members of the Seimas are elected on the basis of universal, equal, and direct suffrage by secret ballot.

Paragraph 3 of Article 55 of the Constitution provides that the procedure for the election of the members of the Seimas is established by law. This constitutional provision means that the legislature has the duty to consolidate, by means of a law, a system of the election of the members of the Seimas, to establish the grounds and procedure for organising elections, *inter alia*, including the nomination of candidates for members of the Seimas, electoral campaigning, the procedure for voting, the establishment of the results of election, the procedures for settling electoral disputes, as well as the regulation of other relationships of the election of the members of the Seimas. In doing so, the legislature must pay regard to the Constitution; it may not deny, distort, or restrict the universal, equal, and direct suffrage and secret ballot, nor may it create any legal preconditions for other subjects to do so, as, otherwise, this would mean that the supreme sovereign power of the Nation is altogether denied through the representation of the Nation – the Seimas.

... the legislature, under the Constitution, has the duty to establish, by means of a law, such a legal regulation that would ensure that voters vote in person and by secret ballot and that, in the course of voting, it would be impossible to influence and control the will of voters. In particular, it is impermissible that the

financing of elections would be non-transparent or uncontrollable, or that in an election campaign such election techniques would be used that are contrary to the morals, justice, and the harmony of society. It also needs to be emphasised that, under the Constitution, no motives may justify any direct or indirect buying of votes, or such a practice of an election campaign where voters, by means of presents or other rewards, are prompted to participate in or abstain from elections and/or to vote for or against one or another candidate. This is equivalent to the bribery of voters, meaning that citizens of the Republic of Lithuania are deprived of their right to freely express their genuine will on their own in the election of the Seimas, as well as that the Nation is deprived of its right to elect such representation of the Nation that would be able to express its genuine supreme sovereign power.

It needs to be emphasised that the Constitution gives rise to the duty of the legislature to establish, by means of a law, such a legal regulation that ensures the fairness and transparency of the process of election to the Seimas, both of which are necessary preconditions for the trust of the Nation in its representation.

If the legislature fails to comply with these requirements, which stem from the Constitution, and fails to establish a mechanism for ensuring democratic, free, and fair elections, there might always be doubts as to the legality of the election of the members of the Seimas.

The principle of voting in person (directly)

The Constitutional Court's conclusion of 5 November 2004

... the legislature, while regulating electoral relationships, may not establish any such a legal regulation that would create such preconditions where a different person votes for the voter (except when the voter is unable to implement such his/her constitutional right by himself/herself for health reasons).

Voting in person (directly) is one of the crucial guarantees of a free, thus, democratic, expression of the will of the electorate. The constitutional imperative of democratic elections requires that voters who, on the set day, are unable to appear at the polling-station due to illness, disability, imprisonment, the performance of official tasks, as well as due to a travel or other personal reasons, be granted the possibility of expressing their will in elections. The legislature has the constitutional duty to establish such a legal regulation ensuring that citizens who are unable to vote on the day of the election would have the possibility of implementing their constitutional right at another time. While regulating the relationships related to absentee voting, the legislature has discretion; however, it may not violate those principles of democratic elections that are consolidated in the Constitution.

One of the common forms of absentee voting in democratic states is voting by mail. The legislature, when deciding whether to opt for this form of absentee voting and regulating the relationships linked with voting by mail, must take into consideration not only the relevant legal factors, but also the particularities of the political culture of society, the level of civil maturity, public mentality, and other social factors, for they also determine whether voting by mail would be abused, whether the institution of voting by mail would become a means of the distortion of the actual will of voters, and whether it would deny the right of the Nation to elect such its representation that would express its genuine supreme sovereign power.

The discretion of the legislature to choose a system of elections to municipal councils (Article 34 and Paragraphs 2 and 3 of Article 119 of the Constitution)

See 10. Local self-government and governance, 10.2. Local self-government, the ruling of 9 February 2007.

The passive electoral right in elections to municipal councils (the requirement that, after the legislature chooses exclusively the proportional system of elections to municipal councils, permanent residents of administrative units must have the possibility of standing for election to municipal councils even where they are included in the lists of candidates that are drawn up by entities other than political parties)

See 10. Local self-government and governance, 10.2. Local self-government, the ruling of 9 February 2007.

The active and passive electoral rights (Article 34 of the Constitution)

The Constitutional Court's ruling of 1 October 2008

The provision of Article 34 of the Constitution whereby citizens who, on the day of the election, have reached 18 years of age have the electoral right (Paragraph 1) consolidates the so-called active electoral right, i.e. the possibility for persons to participate in elections to particular institutions of public power by freely choosing for which of the nominated candidate or candidates to vote. The provision of Paragraph 2 of the same article, whereby the right to stand for election is established by the Constitution of the Republic of Lithuania and by the election laws, consolidates the so-called passive electoral right, i.e. the possibility for a person to stand as a candidate in the election of the members of a particular elective public power institution under the procedure established by the Constitution and election laws, i.e. it consolidates the possibility of seeking to stand for election. Paragraph 3 of Article 34 of the Constitution establishes a restriction on the active and passive electoral rights – persons declared by a court to be legally incapacitated do not have this right.

All the provisions of Article 34 of the Constitution are interrelated. ... when interpreting the provision of Paragraph 1 of Article 34 together with Paragraphs 2 and 3 of Article 34, it needs to be noted that citizens who, on the day of the election, have reached 18 years of age and have not been declared by a court to be legally incapacitated have the right to elect only those persons as members of particular public power institutions who meet the requirements (conditions) laid down in the Constitution and laws that are not in conflict with the Constitution.

In this context, it needs to be noted that the articles of the Constitution that regulate the relationships of elections to particular public power institutions, i.e. Articles 55, 56, and 57 of the Constitution, consolidating the legal imperatives of the election of the members of the Seimas, Articles 78, 79 and 80 thereof, consolidating the legal imperatives of the election of the President of the Republic, and Article 119 of the Constitution, consolidating the legal imperatives of the election of members to municipal councils, are inseparable from the provisions of Article 34 of the Constitution, which consolidate the constitutional grounds for the active and passive electoral rights.

It should also be noted that, even though the constitutional nature of the said public power institutions, their place in the system of public power institutions, and their functions and powers determine the specific legal regulation of elections to each of these institutions, the legislature, while regulating the legal relationships of the election of the members of the Seimas, the President of the Republic, and members of municipal councils, must pay regard to the imperatives of the universal, equal, and direct suffrage and secret ballot, which stem from the Constitution.

The Constitution, *inter alia*, Articles 34, 55, and 56 thereof, gives rise to the duty of the legislature to consolidate, by means of a law, a system of the election of the members of the Seimas, to establish the grounds and procedure for organising elections, *inter alia*, including the nomination of candidates for members of the Seimas, electoral campaigning, the procedure for voting, the establishment of election results, the procedures for settling electoral disputes, as well as the regulation of other relationships of the election of the members of the Seimas. In this context, it needs to be emphasised that, when establishing the requirements that must be met by candidates for members of the Seimas, the legislature must pay regard to the Constitution; it may not deny, distort, or restrict the universal, equal, and direct suffrage and secret ballot, nor may it create any legal preconditions for other subjects to do so.

The principles of electoral law

The Constitutional Court's ruling of 1 October 2008

... the principles of the universal, equal, and direct suffrage, as well as secret ballot ... are established not only in Paragraph 1 of Article 55 of the Constitution, but also in other articles of the Constitution that regulate the legal relationships of the election of the President of the Republic (Paragraph 2 of Article 78) and members of municipal councils (Paragraph 2 of Article 119). First of all, these principles are applicable in the implementation of the active electoral right.

The principle of universal electoral right, which is consolidated in Paragraph 1 of Article 55 of the Constitution, means that the right to participate in elections of the members of the Seimas must be ensured for all citizens of the Republic of Lithuania who meet the requirements (conditions) stemming from the Constitution and laws that are not in conflict with the Constitution.

With regard to the principle of equal suffrage, it is universally recognised that this principle, *inter alia*, means that, in the course of organising and conducting elections, all voters must be treated equally, as well as that the vote of each voter is equal to the vote of any other voter and has equal weight when the results of voting are established.

The principle of direct suffrage requires that members of the Seimas must be elected without intermediaries. When interpreting the content of this principle, it needs to be noted that the Constitutional Court has held that the legislature, while regulating electoral relationships, may not establish any such a legal regulation that would create the preconditions for a different person to vote for the voter (except when the voter is unable to implement such his/her constitutional right by himself/herself for health reasons) (conclusion of 5 November 2004).

The principle of secret ballot requires that such conditions for expressing the will of voters during voting be created that nobody could control voters, exert influence on their choice, or otherwise impede their possibility of expressing their will freely and unrestrictedly.

The system of the election of the members of the Seimas

The Constitutional Court's ruling of 1 October 2008

... the Constitution does not establish a concrete system of the election of the members of the Seimas. According to the provision of Paragraph 3 of Article 55 of the Constitution, this is left to be decided by the legislature, which has broad discretion as regards this issue. It needs to be noted that a law may establish the exclusively proportional, or exclusively majoritarian, or a different system of the election of the members of the Seimas, *inter alia*, a mixed electoral system, which combines both the proportional and majoritarian electoral systems.

[...]

As such, a proportional system of elections, or a majoritarian system of elections, or a different system of elections, *inter alia*, a mixed electoral system, which combines both the proportional and majoritarian electoral systems, may not be regarded as creating the preconditions for violating the requirements of free and democratic elections, universal and equal suffrage, secret ballot, or other standards of elections in a democratic state under the rule of law. However, it also needs to be noted that, when consolidating a particular system of the election of the members of the Seimas, the legislature must respect the norms and principles of the Constitution, as well as the constitutional concept of the Seimas as the representation of the Nation.

... elections are a political process. The electoral rights (both active and passive ones) are closely related to the right of citizens of the Republic of Lithuania to participate in the governance of their state, as consolidated in Article 33 of the Constitution, as well as to the right of citizens to freely form political parties, as consolidated in Article 35 of the Constitution, provided that the aims and activities thereof are not contrary to the Constitution and laws. It needs to be noted that the purpose of establishing political parties, as well as their activity, is inseparable from seeking public power, therefore, as well as from participation in elections to the representative institutions of public power, *inter alia*, the Seimas.

Under the Constitution, whichever system of the election of the members of the Seimas (exclusively proportional, or exclusively majoritarian, or a different system, *inter alia*, a mixed electoral system, which combines both the proportional and majoritarian electoral systems) is chosen by the legislature, it is not allowed to establish any such a legal regulation that would prevent political parties and their nominated candidates from participating in the election of the members of the Seimas. In this ruling of the Constitutional Court, it has been held that, in itself, such a system of the election of the members of the Seimas where the proportional and majoritarian systems of elections are combined does not create the

preconditions for violating the standards of universal, equal, and direct voting, as well as other electoral standards of a democratic state under the rule of law.

Thus, such a system of the election of the members of the Seimas where the candidates entered on the lists of political parties and the individual candidates nominated by political parties compete for the mandates of members of the Seimas is, under the Constitution, possible if it is also ensured that those citizens who are not entered on the lists of political parties or are not nominated by them have the possibility of standing for election as members of the Seimas.

When regulating the relationships of the election of the members of the Seimas by means of a law, the legislature is bound by the Constitution, *inter alia*, by the requirement, which stems from Paragraph 2 of its Article 35 thereof, whereby “No one may be compelled to belong to any ... political party ...”. Therefore, under the Constitution, the legislature may not establish any such a legal regulation whereby a person who wishes to make use of his/her passive electoral right (Paragraph 2 of Article 34 and Article 56 of the Constitution) in the election of the members of the Seimas would be compelled to become a member of a certain political party or to connect himself/herself with a certain political party by relationships other than those of formal membership.

The proportional electoral system; the requirement that, after the legislature chooses exclusively the proportional system of elections, persons must have the possibility of standing for election even when they are included in the lists of candidates that are drawn up by entities other than political parties

The Constitutional Court’s ruling of 9 November 2010

... if the legislature chooses exclusively the proportional system of elections, the candidates who are entered only on the lists made by the political parties (or other collective entities) participating in an election may be elected to political representative institutions or other democratic representative institutions. These lists are made from a certain number of candidates. It also needs to be noted that, upon choosing the proportional system of elections, such a situation where, in an election, not only the persons entered on the lists drawn up by political parties (or other collective entities), but also individual persons take part, is impossible, i.e. such a situation is impossible where individual persons compete with lists of candidates. The essence of the proportional system of elections would thus be distorted.

... under the Constitution, no such legal regulation is allowed that could prevent political parties or candidates nominated or supported by political parties from participating in elections to political representative institutions. [However,] this requirement may not be interpreted as consolidating the exclusive right of political parties (their members or candidates supported by political parties) to participate in forming political representative institutions.

Thus, the legislature, having chosen exclusively the proportional system of elections, must consolidate in a law not only the right of political parties to participate in elections, but also define other collective entities can participate and have the right to nominate candidates by presenting lists of their candidates in elections to political representative institutions.

[...]

... if the legislature, having chosen exclusively the proportional system of elections, established the legal regulation consolidating the exclusive right of political parties (their members or candidates supported by political parties) to participate in forming political representative institutions, it would also mean that the possibilities of implementing the passive electoral right of the citizens who are not members of political parties and are not linked by any ties with any political party would be burdened in a disproportionate manner in comparison with the possibilities of the persons who are members of political parties or who linked themselves to some political party with ties that are other than formal membership. It also needs to be noted that such a legal regulation would unreasonably eliminate other collective entities, i.e. political organisations, from participation in elections to political representative institutions, *inter alia*, from the nomination of candidates by drawing up lists of candidates in elections to these institutions. Consequently, such a legal regulation would create the preconditions for violating the imperatives of justice and

proportionality stemming from the Constitution, *inter alia*, from the constitutional principle of a state under the rule of law, and for disregarding the principles of electoral law that stem from the Constitution.

Electoral systems

The Constitutional Court's ruling of 11 May 2011

In elections held under the proportional electoral system, one or several multi-member constituencies are formed in which the competition among candidates enlisted in the lists of candidates drawn up by political parties (or other collective subjects) takes place; whereas, under the majoritarian electoral system, individual candidates stand as candidates in single-member constituencies; in democratic states there also exists the so-called mixed electoral system, which combines both the proportional and majoritarian electoral systems (ruling of 9 November 2010).

In this context, it needs to be noted that, under the mixed electoral system, the two separate electoral systems, the proportional and majoritarian one, are combined without changing their principal features, i.e. individual candidates compete only in single-member constituencies, whereas the candidates entered on the lists of candidates drawn up by political parties (or other collective subjects) compete only in multi-member constituencies.

[...]

... the election system under which a certain representative institution is elected is a whole complex of the rules, principles, and criteria consolidated in election laws; on the basis of the said rules, principles, and criteria, *inter alia*, the results of voting are established. None of the electoral systems may ensure that the established election results will reflect the vote of each voter participating in the election and that each candidate for whom at least a certain number of voters have cast their votes will participate in the distribution of mandates; nevertheless, it is important that the electoral system would not be favourable exclusively to certain subjects exercising their passive electoral right and that it would not create the preconditions for not reflecting the will of the majority of voters.

The discretion of the legislature to choose the manner of establishing the results of elections to municipal councils and of distributing mandates, as well as to consolidate electoral thresholds

See 10. Local self-government and governance, 10.2. Local self-government, the ruling of 11 May 2011.

The right of persons to stand for election as members of municipal councils; the right of the electorate to receive significant information about candidates for members of municipal councils, *inter alia*, about the fact that a candidate has been found by a court to be guilty of a criminal act (Article 25, Paragraph 2 of Article 34, Paragraphs 2 and 3 of Article 119 of the Constitution)

See 10. Local self-government and governance, 10.2. Local self-government, the ruling of 17 November 2011.

The requirements that persons who seek to participate in the electoral process must prove that they have certain political support of society (they must collect the established number of signatures) and must guarantee the validity of their intentions (they must pay the election deposit)

The Constitutional Court's ruling of 29 March 2012

... in its ruling of 1 October 2008, the Constitutional Court noted that, in the Member States of the European Union and in other democratic states, special requirements are quite often established when regulating electoral relationships; upon the fulfilment (meeting) of such requirements (e.g. the requirement to collect a certain number of signatures that confirm the political support of a certain part of society, or the requirement to pay a certain deposit of elections), persons may nominate themselves as candidates for members of the parliament; elections are a responsible political process; therefore, the requirement that candidates for members of the parliament must prove to have a certain political support of society and/or

guarantee the validity of their intentions by a certain (reasonable) financial obligation is recognised as a valid one.

[...]

... when regulating the electoral relationships connected, *inter alia*, with the electoral procedures of the election of the President of the Republic, the legislature, under the Constitution, may establish, *inter alia*, such constitutionally justifiable conditions for the implementation of the passive electoral right by means of which, while taking account of the specificity of the election of the President of the Republic and the conditions established in the Constitution that must be met by a candidate for the post of the President of the Republic, it is sought to proportionally ensure that the election of the President of the Republic would be a responsible political process and that this process would involve the participation of only those candidates (persons seeking to stand as candidates) who have serious intentions.

Consequently, in regulating electoral relationships, *inter alia*, the relationships connected with the electoral procedures of the election of the President of the Republic, the legislature, under the Constitution, may consolidate an election deposit as a legal institution; under the Constitution, the legislature also has the discretion, while being bound by the norms and principles of the Constitution, to establish the procedural stage of the election of the President of the Republic at which the election deposit must be paid, the persons that are allowed to pay the election deposit, the procedural stage of the election of the President of the Republic at which the election deposit is refunded to the person who paid it (or to stipulate that the election deposit is refunded after the said procedures are over), and the conditions of such refunding.

[...]

... while regulating the electoral relationships linked with the election procedures for elections to the Seimas, the European Parliament, or municipal councils, the legislature may, under the Constitution, establish, *inter alia*, such constitutionally justifiable procedures for implementing the passive electoral right that would, in view of the particularity of elections to the Seimas, the European Parliament, or municipal councils, ensure the responsibility of the process of these elections taking place at not identical levels (at the national (state) level, at the European level, or at the regional level) and the seriousness of the intentions of candidates for members of the Seimas, for members of the European Parliament, or for members of municipal councils, who participate in this process.

Consequently, while regulating the electoral relationships linked with elections to the Seimas, the European Parliament, or municipal councils (*inter alia*, preparation procedures for these elections), the legislature, under the Constitution, may generally choose an election deposit as a means of regulating electoral relationships and has the discretion bound by the norms and principles of the Constitution to stipulate, *inter alia*, that the amount of an election deposit is different in elections to the Seimas, the European Parliament, or municipal councils and that it changes according to whether the subjects who nominate candidates have (or have not) followed certain requirements of control over the financing of the political campaign, as well as that an election deposit must be paid at the same stage of the preparatory procedure for elections to the Seimas, the European Parliament, or municipal councils, i.e. before submitting the application documents of candidates.

The requirement that the subjects implementing the passive electoral right must submit information (significant to voters) about themselves (data about property, income, and private interests)

The Constitutional Court's ruling of 29 March 2012

... the following provisions of the official constitutional doctrine should be mentioned:

– the Constitution guarantees and protects the interest of the public to be informed (*inter alia*, the rulings of 8 July 2005, 19 September 2005, 29 September 2005, 21 December 2006, and 17 November 2011);

– the interest of the public to be informed assumes especial importance in the process of elections to political representative institutions (ruling of 17 November 2011);

– to ensure the right of citizens to participate in the governance of their state, as consolidated in Paragraph 1 of Article 33 of the Constitution, *inter alia*, through democratically elected representatives, the legislature must create the preconditions for reflecting the will of voters, *inter alia*, the preconditions for ensuring the transparency of the electoral process and fair competition among subjects exercising their passive electoral right, as well as the publicity of information, important to voters, regarding those subjects (ruling of 17 November 2011);

– under the Constitution, the legislature has the powers to establish in election laws such requirements (conditions) for a person eligible to stand for election that are constitutionally justifiable.

Thus, under the Constitution, the legislature, while regulating the electoral relationships linked, *inter alia*, with electoral procedures, may establish, *inter alia*, such constitutionally justifiable procedures (applicable procedural requirements) for implementing the passive electoral right that are aimed at ensuring the transparency of the electoral process and the publicity of information significant to voters about the subjects implementing the passive electoral right.

... under the Constitution, the information significant to a voter about the subjects implementing the passive electoral right may be considered, *inter alia*, to include the relevant data on property, income, and private interests, submitted by candidates for members of political representative institutions in accordance with the procedure set by means of a law. Under the Constitution, the legislature may seek to ensure the public interest to be informed, as well as the fairness and transparency of the electoral process, by establishing, *inter alia*, such a legal regulation that would require that candidates for members of political representative institutions declare their property, income, and private interests.

It needs to be noted that the Constitution gives rise to the duty of the legislature to establish, by means of a law, such a legal regulation that would ensure the integrity and transparency of elections to the Seimas – the necessary preconditions for the trust in the representation of the Nation (conclusions of 5 November 2004 and 7 November 2008).

The said provision of the official constitutional doctrine is *mutatis mutandis* also applicable where the legislature regulates the relationships of other elections, *inter alia*, elections to the European Parliament. In this context, it needs to be noted that, as the Constitutional Court has already held, the European Parliament is not the representation of the Nation; however, it should be regarded as a political representative institution of the European Union, whose election procedure in a concrete Member State of the European Union is established by the legislature of that Member State (ruling of 9 November 2010).

... it should also be noted that, during the electoral process, real possibilities must be created for persons implementing the active electoral right, i.e. for those who decide on the eligibility of a candidate to be a member of the municipal council, to receive information about the major facts of the life of such a candidate, which may be of significance when representing the interests of voters and handling public affairs (ruling of 17 November 2011).

This provision of the official constitutional doctrine is *mutatis mutandis* also applicable in regulating all other electoral relationships, *inter alia*, those connected with elections to the Seimas and elections to the European Parliament.

The requirements for the fairness and financial transparency of election campaigns

The Constitutional Court's ruling of 29 March 2012

... the Constitutional Court has held that the Constitution gives rise to the duty of the legislature to establish, by means of a law, such a legal regulation that would ensure the fairness and transparency of the electoral process to the Seimas, i.e. the necessary preconditions for the trust in the representation of the Nation (conclusions of 5 November 2004 and 7 November 2008); this provision of the official constitutional doctrine is *mutatis mutandis* also applicable to the legal regulation of the elections of the President of the Republic, elections to municipal councils, and elections to the European Parliament.

Consequently, under the Constitution, when regulating the electoral relationships connected, *inter alia*, with the funding (and control over this funding) of election campaigns, which are part of the

electoral process, the legislature has the discretion to choose (consolidate) such means that would ensure the fairness of election campaigns and the transparency of their funding.

[...]

... the legislature may seek to ensure the fairness and transparency of the electoral process by establishing, *inter alia*, such a legal regulation that would require that the funds allocated to finance a political campaign be handled and the legality of their accumulation and use be controlled not by a participant of the election campaign, but by another responsible person on the grounds and under procedure established by means of a law. When establishing such a legal regulation, the legislature is bound by the requirements stemming from the Constitution, *inter alia*, from the principle of proportionality, i.e. the legislature may not establish any such a legal regulation, *inter alia*, such requirements for the said responsible person, that would artificially impede the possibilities of participating in the election campaign by a person seeking to become a candidate in the respective election while implementing his/her passive electoral right guaranteed in the Constitution.

The legal regulation governing the relationships of the election of the members of the Seimas; the discretion of the legislature to consolidate election thresholds in elections to the Seimas

The Constitutional Court's ruling of 29 March 2012

... the Constitutional Court has held that:

– the majority principle is among the democratic principles of decision making (rulings of 22 July 1994 and 4 April 2006);

– none of the electoral systems may ensure that the established election results will reflect the vote of each voter participating in the election and that each candidate for whom at least a certain number of voters have cast their votes will participate in the distribution of mandates; nevertheless, it is important that the electoral system would not be favourable exclusively to certain subjects exercising their passive electoral right and that it would not create the preconditions for not reflecting the will of the majority of voters (ruling of 11 May 2011).

It also needs to be noted that, in its ruling of 1 October 2008, the Constitutional Court ... *inter alia*, held that:

– the Constitution does not establish a concrete system of the election of the members of the Seimas; according to the provision of Paragraph 3 of Article 55 of the Constitution, this is left to be decided by the legislature, which has broad discretion as regards this issue;

– the Constitution, *inter alia*, Articles 34, 55 and 56 thereof, gives rise to the duty of the legislature to consolidate, by means of a law, a system of the election of the members of the Seimas, to establish the grounds and procedure for organising elections, *inter alia*, including the nomination of candidates for members of the Seimas, electoral campaigning, the procedure for voting, the establishment of the results of election, the procedures for settling electoral disputes, as well as the regulation of other relationships of the election of the members of the Seimas;

– a law may establish the exclusively proportional, or exclusively majoritarian, or a different system of the election of the members of the Seimas, *inter alia*, a mixed electoral system, which combines both the proportional and majoritarian electoral systems;

– as regards elections in one multi-member constituency, it is universally recognised that, under the proportional system of elections to the parliament, candidates who are entered on the lists of political parties usually (traditionally) take part in such elections.

Consequently, under the Constitution, the legislature may also establish such a procedure of elections to the Seimas whereby a multi-member constituency of elections to the Seimas would be formed and the lists of candidates would compete in it; in addition, according to such a procedure, the election results would be established in this multi-member constituency by taking account of the proportions of the votes of voters cast for the lists of candidates.

It also needs to be noted that, in its ruling of 11 May 2011 ... and in its ruling of 17 November 2011 ... the Constitutional Court held, *inter alia*, that:

- the legislature, when regulating the relationships of the election of the members of municipal councils, has broad discretion as regards the choice of methods for establishing election results and for distributing mandates and as regards the consolidation of the so-called election thresholds;
- as a rule, an election threshold is established in order to avoid a serious fragmentation into small groups in an elected representative institution and to ensure its stability;
- the election threshold set by the legislature for electing a representative institution must not be too high, so that it does not create the preconditions for not reflecting the interests of different voters and violating their right to participate in deciding questions of self-government through democratically elected representatives.

It needs to be noted that the quoted provisions of the official constitutional doctrine should *mutatis mutandis* be applied in cases where the legislature establishes the procedure for the election of the members of the Seimas under Paragraph 3 of Article 56 of the Constitution.

It also needs to be noted that the non-fragmentation of the Seimas into small groups, as well as the stability of the Seimas, is a constitutional value, which creates the preconditions for ensuring, *inter alia*, the stability of the Government, the activity of which, under the Constitution, *inter alia*, Item 7 of Article 67 and Paragraph 5 of Article 92 thereof, is based on the confidence of the Seimas, once the Seimas assents to its programme, and which, as established in Paragraph 1 of Article 96 of the Constitution, is jointly and severally responsible to the Seimas for its general activities.

Consequently, when establishing the procedure for the election of the members of the Seimas, *inter alia*, the ways of establishing the results of the election to the Seimas and distributing the mandates of members of the Seimas in the multi-member electoral constituency, the legislature has the discretion to establish the so-called election thresholds, by means of which it is sought to avoid a large fragmentation of the Seimas into small groups, as well as to ensure the stability and efficiency of the work of the Seimas, i.e. to establish that only the lists of candidates that have received a certain percentage of votes take part in the distribution of the mandates of members of the Seimas in the multi-member electoral constituency.

It also needs to be noted that, when implementing its discretion to establish election thresholds as a way of establishing the results of the election to the Seimas and a way of distributing the mandates of members of the Seimas in the multi-member constituency, the legislature is bound by the Constitution, *inter alia*, by the constitutional principle of a state under the rule of law and one of its elements – the constitutional principle of proportionality.

The mass and/or systemic bribery of the electorate is a gross violation of the principles of democratic, free, and fair elections

The Constitutional Court's conclusion of 26 October 2012

... the mass and/or systemic bribery of the electorate, *inter alia*, by offering gifts or other rewards, prompting voters or persons eligible to vote to attend or not to attend an election and/or to vote for or against one or another candidate during the electoral process (*inter alia*, during the election campaigning and the period of voting) should be regarded as a gross violation of the principles of democratic, free, and fair elections, *inter alia*, a gross violation of the principles of the fair and transparent electoral process. Such violations of the electoral principles create the preconditions for a reasonable doubt about the legitimacy and legality of the election results, thus, such violations can limit or deny altogether the expression of the supreme sovereign power of the Nation through the representation of the Nation – the Seimas.

[...]

... Since, as mentioned before, such violations create the preconditions for a reasonable doubt about the legitimacy and legality of the election results, such violations can limit or deny altogether the expression of the supreme sovereign power of the Nation through the representation of the Nation – the Seimas, it should be presumed that, as such, the said violations should be regarded to have an essential influence on the election results. Such a presumption may be denied by the Central Electoral Commission after it

assesses other concrete circumstances of the electoral process that are significant for establishing the election results (e.g. a too small number of votes received by a political party or a candidate responsible for the gross violations of [the prohibition on bribing voters]).

... the one-off distribution of goods, money, or other gifts and/or the rendering of services free of charge for a considerable number of voters during rallies or other events meant for entire society or only its part at the time of the electoral process, thus prompting people to attend or not to attend an election and/or to vote for or against one or another candidate during the electoral process, should also be regarded as the mass bribery of voters and persons eligible to vote.

The legal regulation governing the formation, powers, and activity of the Central Electoral Commission and territorial institutions organising elections

The Constitutional Court's conclusion of 26 October 2012

In its conclusion of 23 November 1996, the Constitutional Court emphasised that, when democratic elections are held, the mechanisms of publicity and control are of crucial importance. In this context, it needs to be noted that, under Item 13 of Paragraph 1 of Article 67 of the Constitution, the Seimas forms the Central Electoral Commission and alters its composition. In its decision (no 5/94) of 11 July 1994, the Constitutional Court held that, under the said provision, the universal institution for the organisation of elections – the Central Electoral Commission – must be formed; the constitutional provision on the Central Electoral Commission must be implemented by consolidating, by means of a law, the mission of this commission based on the relevant constitutional provisions, as well as the principles of its formation and competence. It needs to be noted that a law must establish such a legal regulation of the procedure for forming the Central Electoral Commission and territorial institutions for organising elections that would create the preconditions for those institutions to adopt objective and efficient decisions on organising elections.

... the constitutional mission of the Central Electoral Commission to organise elections also implies its powers to exercise control and take measures so that the observance of the principles of democratic, free, and fair elections would be efficiently ensured, *inter alia*, that the principles of the fairness and transparency of the electoral process would be ensured. When taking account of the aforesaid, under the Constitution, the legislature should establish such a legal regulation on the electoral process whereby the Central Electoral Commission and the territorial institutions for organising elections would have the powers to act so that the adherence to the aforesaid electoral principles would be efficiently ensured, *inter alia*, violations of these principles would be prevented, such violations would be investigated, and sanctions would be applied to the participants of the electoral process and other persons that are responsible for such violations.

The Constitution consolidates the principle of responsible governance (ruling of 1 July 2004). ... this principle implies that all state institutions and officials, *inter alia*, the Central Electoral Commission and the territorial institutions for organising elections, are obliged to follow the Constitution and law while performing their functions and to properly implement the powers granted to them by the Constitution and laws by acting in the interests of the Nation and the State of Lithuania.

[...]

... if, prior to the day of voting, the Central Electoral Commission had the powers to cancel the registration of a candidate who has grossly violated the prohibition ... on bribing voters ... the legal preconditions would be created for ensuring the fairness and transparency of the electoral process without resorting to the strictest measure ... which is declaring the election results in a constituency invalid.

Forming political representative institutions in a democratic state

The Constitutional Court's conclusion of 10 November 2012

When emphasising the importance of elections to representative institutions, the Constitutional Court has held on more than one occasion that, in a constitutional democracy, the formation of political

representative institutions is subject to special requirements. These institutions may not be formed in such a way that would raise doubts as to their legitimacy or legality, *inter alia*, doubts as to whether the principles of a democratic state under the rule of law were upheld in the course of the election of persons to political representative institutions. Otherwise, the trust of people in the representative democracy, state institutions, and the state itself would be undermined. Democratic elections are an important form of the participation of citizens in the governance of the state, as well as a necessary element of the formation of state political representative institutions. Elections may not be regarded as democratic or their results as legitimate and legal if elections are held by showing no consideration for the principles of democratic elections established in the Constitution and violating democratic electoral procedures (conclusion of 5 November 2004, the ruling of 1 October 2008, the conclusion of 7 November 2008, the rulings of 9 November 2010 and 29 March 2012, and the conclusion of 26 October 2012). In consolidating the provisions of electoral law in concrete laws, the legislature is obliged to follow the imperatives of a legal regulation that are consolidated in the Constitution (rulings of 1 October 2008 and 29 March 2012 and the conclusion of 26 October 2012).

The Constitution consolidates the following universally recognised democratic principles of elections to political representative institutions: elections must be conducted on the basis of universal, equal, and direct suffrage, and the ballot must be secret; under the Constitution, only such elections are allowed where there is free and fair competition for the mandate, where voters have the right and a real possibility of choosing from several candidates, where they can express their will freely and without being subjected to control at the time of voting; the requirements for transparency and publicity must be applied to the formation of a political representative institution (ruling of 9 November 2010).

Gross violations of the principles of democratic, free, and fair elections (*inter alia*, the mass and/or systemic bribery of the electorate)

The Constitutional Court's conclusion of 10 November 2012

... as it was held in the Constitutional Court's conclusion of 26 October 2012, mass and/or systemic bribery of the electorate, *inter alia*, by offering gifts or other rewards, prompting voters or persons eligible to vote to attend or not to attend an election and/or to vote for or against one or another candidate during the electoral process (*inter alia*, during the election agitation campaign and the period of voting) should be regarded as a gross violation of the principles of democratic, free, and fair elections, *inter alia*, that of the fair and transparent electoral process. Such violations of the electoral principles create the preconditions for a reasonable doubt about the legitimacy and legality of the election results; thus, such violations can limit or deny altogether the expression of the supreme sovereign power of the Nation through the representation of the Nation – the Seimas; therefore, it should be presumed that, as such, the said violations should be regarded as having an essential influence on the election results. Such a presumption may be denied by the Central Electoral Commission after it assesses other concrete circumstances of the electoral process that are significant for establishing the election results. It has also been emphasised in the aforesaid conclusion of the Constitutional Court that one-off distribution of goods, money, or other gifts and/or the rendering of services free of charge for a considerable number of voters during rallies or other events meant for entire society or only its part at the time of the electoral process, thus prompting people to attend or not to attend an election and/or to vote for or against one or another candidate during the electoral process, should also be regarded as the mass bribery of voters and persons eligible to vote.

... it needs to be noted that the provisions of the official constitutional doctrine regarding mass and/or systemic bribery of voters are also applicable to the bribery of voters by prompting them to vote in favour or against the list of this or that political party and/or to rank the candidates on a list in this or that manner.

... it ... needs to be emphasised that, unless denied by the respective authority, as such, the established gross violations of the principles of democratic, free, and fair elections, *inter alia*, the fairness and transparency of the electoral process, should be regarded as having an essential influence on the election results, i.e. unless denied by the respective authority, the said gross violations distort the genuine will of voters, which is the essential precondition for the legitimacy and lawfulness of election results, and preclude

the establishment of the actual and correct results of elections; thus, the candidates whose election was sought by committing gross violations of the principles of democratic, free, and fair elections may not receive the mandate of a member of the Seimas; otherwise, the trust of the Nation in its representation and the state itself would be undermined.

[...]

... by the direct or indirect bribery of voters, *inter alia*, by offering gifts or other rewards, prompting them to cast preference votes for one or another candidate in the multi-member constituency, the genuine will of voters, which is the essential precondition for the legitimacy and lawfulness of election results, can be distorted; thus, in every situation where the Central Electoral Commission approves the final sequence of the lists of candidates for members of the Seimas, it has the duty to ascertain that there are no reasonable doubts that the genuine will of voters could be distorted, *inter alia*, when preference votes were cast for one or another candidate entered on the list of candidates of a party.

The powers of the Central Electoral Commission to declare election results invalid

The Constitutional Court's conclusion of 10 November 2012

... under the Constitution, the legislature should establish such a legal regulation on the electoral process whereby the Central Electoral Commission and the territorial institutions for organising elections would have the powers to act so that the adherence to the principles of democratic, free, and fair elections, *inter alia*, the fairness and transparency of the electoral process, would be effectively ensured. This means, among other things, that, under the Constitution, the Central Electoral Commission should have sufficient powers so that, upon establishing gross violations of the aforesaid electoral principles, it could effectively ensure that those violations would not distort the genuine will of voters and that the persons regarding the lawfulness of whose election there are doubts would not receive the mandate of a member of the Seimas. The Central Electoral Commission should have, *inter alia*, the powers to apply the strictest measure – to declare the results of an election invalid. It needs to be noted that the legislature should provide for the said measure as an *ultima ratio*, i.e. such a legal regulation of the electoral process should be established whereby the Central Electoral Commission would also have other measures to ensure that the genuine will of voters would not be distorted, *inter alia*, to recognise that the participants of the electoral process – the candidates whose election was sought by committing gross violations of the principles of democratic, free, and fair elections, *inter alia*, the fairness and transparency of the electoral process, or the entire list of a political party resorting to such tactics in its election campaign – have lost the right to participate in the election and to stand for election as members of the Seimas, or to recognise that a certain list of candidates has lost the right to participate in the distribution of the mandates of members of the Seimas; thus, declaring election results invalid should be regarded as a measure applicable in situations where it is impossible to achieve the non-distortion of the will of voters by other means.

... in the regulation of the said powers of the Central Electoral Commission by means of a law, account should be taken of the particularities of the electoral systems (*inter alia*, of the fact that the recognition of election results in the multi-member constituency and in a single-member constituency could give rise to essentially different effects); account should also be taken of the fact that, under Paragraph 2 of Article 55 of the Constitution, the Seimas is deemed elected when not less than 3/5 of the members of the Seimas are elected; therefore, when consideration is given to the damage that might be inflicted on the expectations of voters and on the stability of the system of state authority if the election results of an election to the Seimas conducted under the proportional electoral system are declared invalid, this measure (declaring election results invalid in the multi-member constituency) should be an *ultima ratio*.

The powers of the Seimas to adopt a final decision on the results of an election to the Seimas (Paragraph 3 of Article 107 of the Constitution)

See 5. The Seimas, 5.2. The functions and powers of the Seimas, 5.2.6. Other powers, the ruling of 27 May 2014.

The requirement that, after the legislature chooses exclusively the proportional system of elections, persons must have the possibility of standing for election even when they are included in the lists of candidates that are drawn up by entities other than political parties

The Constitutional Court's ruling of 13 October 2014

In its ruling of 9 November 2010, the Constitutional Court held that, under the Constitution, the legal regulation consolidating the exclusive right of political parties (their members or candidates supported by political parties) to participate in the formation of political representative institutions is not allowed; the legislature, having chosen exclusively the proportional electoral system, must, in a law, not only consolidate the right of political parties to participate in elections, but also establish what other collective entities can participate and have the right to nominate candidates, by presenting lists of their candidates, in elections to political representative institutions. The Constitutional Court drew attention to the fact that the Constitution consolidates not only the institution of political parties, but also that of political organisations: the constitutional concept of political organisations encompasses the organisations founded to serve various socially important needs and having political aspirations, *inter alia*, to participate in elections to political representative institutions; the same concept also encompasses such organisations that are founded for the purpose of implementing certain political aspirations, among other things, for participating in a concrete election, *inter alia*, to the European Parliament.

[...]

... the constitutional requirement [was] revealed in the Constitutional Court's ruling of 9 November 2010 that, if the legislature chooses exclusively the proportional electoral system, citizens of the Republic of Lithuania and citizens of other Member States of the European Union who permanently reside in Lithuania must be given the possibility of standing for election to the European Parliament also in cases when they are entered on the lists of candidates that are drawn up by entities other than political parties.

The passive electoral right in elections to political representative institutions, *inter alia*, the European Parliament (Paragraph 2 of Article 34 of the Constitution)

The Constitutional Court's ruling of 13 October 2014

The Constitutional Court has held that, under the Constitution, in the regulation of electoral relationships by means of a law, it is necessary to ensure an equal active electoral right of all voters (their right to vote, i.e. to exercise the active electoral right), as well as an equal passive electoral right of all candidates (their right to be registered in an election as a candidate, i.e. the right to stand for election) (rulings of 11 May 2011, 17 November 2011, and 29 March 2012).

The provision of Paragraph 2 of Article 34 of the Constitution, according to which the right to stand for election is established by the Constitution of the Republic of Lithuania and by the election laws, consolidates the so-called passive electoral right, i.e. the possibility for a person to stand as a candidate for a member of a particular elective institution of public power under the procedure established in the Constitution and election laws; thus, it consolidates the possibility of seeking to stand for election (rulings of 1 October 2008, 9 November 2010, and 29 March 2012).

[...]

The Constitutional Court has noted that the European Parliament is not the representation of the Nation; however, it should be regarded as a political representative institution of the European Union, whose election procedure in a concrete Member State of the European Union is established by the legislature of that Member State (ruling of 9 November 2010).

Thus, the provision of Paragraph 2 of Article 34 of the Constitution, according to which the right to stand for election is established by the Constitution of the Republic of Lithuania and by the election laws, means, *inter alia*, that, in regulating, by means of laws, the implementation of the passive electoral right in elections to representative political institutions, *inter alia*, the European Parliament, the legislature has the constitutional duty to respect the imperatives that arise out of the Constitution, i.e. it has to pay regard, *inter alia*, to the principles of electoral law (ruling of 9 November 2010).

In interpreting Paragraph 2 of Article 34 of the Constitution, the Constitutional Court has also held that the right of a person, which is guaranteed by the Constitution, to stand for election under the conditions provided for in the law is an important constitutional right of a person (ruling of 11 May 2011); in election laws, the legislature has the powers to establish the constitutionally justifiable requirements (conditions) for a person who is eligible to stand for election (rulings of 25 May 2004, 17 November 2011, and 29 March 2012).

The Constitution guarantees and safeguards the interest of the public to be informed (*inter alia*, the rulings of 23 October 2002, 8 July 2005, 21 December 2006, and 17 November 2011). In interpreting Paragraph 2 of Article 34 of the Constitution in conjunction with the right of the public to receive information, which is consolidated in Article 25 thereof, the Constitutional Court has emphasised that the interest of the public to be informed assumes especial importance in the process of elections to political representative institutions (rulings of 17 November 2011 and 29 March 2012).

The Constitutional Court has also noted that the legislature must ensure fair competition among subjects implementing the passive electoral right, as well as the publicity of information important to voters regarding those subjects (rulings of 17 November 2011 and 29 March 2012).

... Paragraph 2 of Article 34 of the Constitution gives rise to the duty of the legislature to establish such a legal regulation that would ensure the adherence to the principles of democratic elections, *inter alia*, the transparency of the electoral process, the equality of the candidates nominated by collective entities, fair competition, as well as the publicity of information important to voters about such entities. The ensuring of democratic electoral principles implies the establishment of the legal regulation creating the preconditions for informing voters in a proper manner about the collective entities that nominate candidates in an election, *inter alia*, the names of such entities; this information must be public, easily accessible, and it must not mislead voters; the collective entities that nominate candidates in an election must have the possibility of participating in the electoral process and presenting themselves under the name of their choice to voters. It should be noted that the name of these entities helps voters not only to recognise and distinguish them from other collective entities that nominate candidates, but also to decide about their values, strivings, etc. If their possibility of participating in the electoral process and presenting themselves under the name of their choice were restricted, the implementation of the passive electoral right of the persons entered on the lists of candidates nominated by such entities would be burdened and the principles of the transparency of the process of a democratic electoral process, of the equality of collective entities that nominate candidates in an election, and of fair competition would be violated.

At the same time, it needs to be noted that the collective entities that have the right to nominate candidates in elections to political representative institutions, when they choose their name under which they wish to present themselves to voters, and the legislature, when it regulates the respective relationships, are bound by the Constitution, *inter alia*, the constitutional principle of elections as a responsible political process, the constitutional imperatives to respect and protect the constitutional order, public order, to protect public morals, not to incite national, racial, religious, or social hatred, and not to incite violence or discrimination. The principles of democratic elections consolidated in the Constitution also give rise to the imperative for the legislature to establish such a legal regulation that would ensure that, during the electoral process, voters are properly informed about the collective entities that nominate candidates in a particular election, *inter alia*, the names of such entities, which must not be misleading to voters.

The requirement that the even distribution of the number of voters must be ensured in single-member constituencies (Paragraph 1 of Article 55 of the Constitution)

The Constitutional Court's ruling of 20 October 2015

... it should be noted that, having decided on such an electoral system where the members of the Seimas (or part thereof) are elected in single-member constituencies, the legislature is under the duty, which stems from the Constitution, *inter alia*, Paragraph 1 of Article 55 thereof, to establish a legal regulation ensuring that the number of voters in these constituencies does not differ to such an extent that creates the preconditions for distorting the equal weight of votes when the results of voting are established.

The greater the difference in the number of voters among separate constituencies, the greater the distortion of the equal weight of votes can be when the results of voting are established. However, this does not mean that, under the Constitution, any differences in the number of voters among separate constituencies are not possible at all.

In this context, it should be noted that the number of voters in constituencies is subject to change (increase or decrease) due to various objective reasons (*inter alia*, the migration of voters or other demographic factors). In view of this fact, it should be pointed out that, when constituencies are formed, it is not possible with complete accuracy to determine what the number of voters will be on the election day in each constituency. As held by the Constitutional Court on more than one occasion, legal acts may not require what is impossible (*lex non cogit ad impossibilia*). The Constitutional Court has also held that the Constitution does not require what is irrational (ruling of 27 June 2007). Thus, the Constitution does not require that such a legal regulation be established under which exactly the same number of voters in all constituencies would be ensured.

In its ruling of 13 October 2014, the Constitutional Court noted that fair competition among subjects exercising their passive electoral right and the transparency of the electoral process are the universally recognised principles of democratic elections. ... ensuring the aforementioned principles of democratic elections implies certain requirements for the formation of constituencies: constituencies must be formed transparently; they must satisfy the principle of connectivity and must be compact; their boundaries must be clear and understandable. Under the Constitution, while seeking to maintain a balance among various constitutional values, *inter alia*, to ensure the implementation of the requirements stemming with regard to the formation of constituencies from the universally recognised principles of democratic elections, such as equal suffrage, fair competition among subjects exercising their passive electoral right, and the transparency of the electoral process, it is permissible to establish such a legal regulation that allows certain differences in the number of voters among constituencies. However, there is no constitutional justification for a legal regulation that would allow such differences in the number of voters that would create the preconditions for distorting the equal weight of votes when the results of voting are established or the preconditions for denying the essence of equal suffrage as such.

Thus, once the legislature has chosen such an electoral system where the members of the Seimas (part thereof) are elected in single-member constituencies, the Constitution, *inter alia*, Paragraph 1 of Article 55 thereof, gives rise to the duty of the legislature, taking account of all circumstances significant for the formation of constituencies (*inter alia*, the migration of voters, other demographic factors, the principle of connectivity), to establish a legal regulation under which constituencies are formed in such a way that ensures, to the greatest possible extent, the even distribution of the number of voters among constituencies. This is an essential precondition for ensuring the equality and equal weight of all votes when the results of voting are established. When implementing this duty, which stems from the Constitution, and establishing the respective legal regulation, the legislature may not create any preconditions for denying, distorting, or unjustifiably limiting equal suffrage.

The day of regular elections and early elections to the Seimas (Article 57 and Paragraph 4 of Article 58 of the Constitution); the day of the regular elections, repeat elections, and early elections of the President of the Republic (Article 80, Paragraphs 2 and 3 of Article 81, Paragraph 1 of Article 87, and Paragraph 1 of Article 89 of the Constitution)

The Constitutional Court's ruling of 15 February 2019

Under Paragraph 1 of Article 57 of the Constitution, a regular election to the Seimas is held in the year of the expiry of the powers of the members of the Seimas on the second Sunday of October and, according to Paragraph 2 of the same article, a regular election to the Seimas following an early election to the Seimas is held at the time specified in the first paragraph of this article. Thus, Article 57 of the Constitution *expressis verbis* establishes the specific date for regular elections to the Seimas, i.e. one day for an election to the Seimas.

According to Paragraph 4 of Article 58 of the Constitution, the day of election to the new Seimas is specified in the resolution of the Seimas or in the act of the President of the Republic on the early election to the Seimas; the election to the new Seimas must be held within 3 months of the adoption of the decision on the early election. Taking account of Article 57 of the Constitution, the term “the day of election to the Seimas”, used in Paragraph 4 of Article 58 of the Constitution, should be interpreted as meaning that, under the Constitution, one day of an early election to the Seimas may be established, which must be a Sunday.

[...]

Under Article 80 of the Constitution, a regular election of the President of the Republic is held on the last Sunday two months before the expiry of the term of office of the President of the Republic. Under Paragraph 2 of Article 81 of the Constitution, if, during the first round of voting in the election of the President of the Republic, no single candidate gets the requisite number of votes, the second round of voting is held two weeks later with the two candidates who have received the greatest number of votes standing against each other. Taking account of Article 80 of the Constitution, the provision “the second round of voting is held two weeks later” of Paragraph 2 of Article 81 of the Constitution should be interpreted as meaning that the second round of voting with the two candidates who have received the greatest number of votes in the first round of voting in the election of the President of the Republic should be held on the Sunday after two weeks after the Sunday that is the last Sunday two months before the expiry of the term of office of the President of the Republic. It should be noted that the second round of voting in the election of the President of the Republic is not identical to the first round of voting in this election, i.e. in the second round of voting in the election of the President of the Republic, votes are cast not for all candidates, but only for the two candidates who have received the greatest number of votes in the first round of voting in the election of the President of the Republic.

Thus, Article 80 and Paragraph 2 of Article 81 of the Constitution *expressis verbis* establish the specific date of a regular election of the President of the Republic, i.e. one day of the election, as well as the specific date of the second round of voting in the election of the President of the Republic, i.e. one day of the election, on which votes are cast for the two candidates who have received the greatest number of votes in the first round of voting.

Under Paragraph 3 of Article 81 of the Constitution, if no more than two candidates take part in the first round, and neither of them receives the requisite number of votes, a repeat election is held. According to Paragraph 1 of Article 87 of the Constitution, after, in cases provided for in Paragraph 2 of Article 58 of the Constitution, the President of the Republic calls an early election to the Seimas, the newly elected Seimas may, by a 3/5 majority vote of all the members of the Seimas and within 30 days of the day of the first sitting, call an early election of the President of the Republic; also, under Paragraph 1 of Article 89 of the Constitution, the Seimas must, within 10 days, call an election of the President of the Republic, which must be held within two months (if the Seimas cannot convene and call the election of the President of the Republic, the election is called by the Government), in the event that the President of the Republic dies, resigns, or is removed from office according to the procedure for impeachment proceedings, or the Seimas decides that the state of health of the President of the Republic does not allow him/her to hold office (such election of the President of the Republic should also be considered an early election). In interpreting these provisions of the Constitution in the context of the provisions of Article 80 thereof, it should be noted that Paragraph 3 of Article 81 of the Constitution provides for a repeat election of the President of the Republic, Paragraph 1 of Article 87 thereof provides for an early election of the President of the Republic, and Paragraph 1 of Article 89 thereof stipulates that an election of the President of the Republic is called in the event that the President of the Republic dies, resigns, or is removed from office according to the procedure for impeachment proceedings, or the Seimas decides that the state of health of the President of the Republic does not allow him/her to hold office – in all these cases, the election must also take place on one day, which must be a Sunday.

It should be held that Article 57, Paragraph 4 of Article 58, Article 80, Paragraphs 2 and 3 of Article 81, Paragraph 1 of Article 87, and Paragraph 1 of Article 89 of the Constitution establish the

requirement that elections to the Seimas and the elections of the President of the Republic must last one day (it is provided that regular elections are held on the specific date), which must be a Sunday.

It should be emphasised that, under the Constitution, such a requirement is not an objective in itself. As the Constitutional Court held in its ruling of 19 September 2002, the provision of Article 1 of the Constitution that the State of Lithuania is an independent democratic republic, *inter alia*, means that free and periodic elections and the democratic process of decision making must be ensured in the state; this provision embodies the constitutional obligation not to deviate from the requirements of democracy; the said obligation is applicable to all state institutions, including the legislature. One of the fundamental characteristics of a democratic state is democratic elections to representative institutions of state power (*inter alia*, the conclusions of 23 November 1996 and 7 November 2008 and the ruling of 29 March 2012).

In view of this, it should be noted that the above-mentioned constitutional requirement that elections to the Seimas and the elections of the President of the Republic must last one day (i.e. the Constitution makes the precise provision for the specific date for regular elections and the procedure for determining the day of repeat or early elections) is aimed at ensuring the implementation of a necessary condition of democracy – free and periodic elections and the democratic process of decision making during elections. Establishing, in the Constitution, the precise day for regular elections and limiting, under the Constitution, the discretion to choose the day and duration of repeat or early elections precludes the state authority institutions that, under the Constitution, are vested with the powers to call elections from abusing these powers, *inter alia*, from influencing the election results while exercising the said powers. At the same time, this constitutes one of the preconditions for ensuring the fairness and transparency of the electoral process and revealing the actual will of voters in elections.

2.3.4. The right to enter state service

See 4. The state and its institutions, 4.3. State service.

2.3.5. The right to criticise the work of state institutions or their officials and to appeal against their decisions

The right to criticise the work of state institutions or their officials (Paragraph 2 of Article 33 of the Constitution)

The Constitutional Court's ruling of 10 March 1998

Paragraph 2 of Article 33 of the Constitution prescribes: “Citizens shall be guaranteed the right to criticise the work of state institutions or their officials and to appeal against their decisions. Persecution for criticism shall be prohibited.”

Between these norms and ... norms of Article 25 of the Constitution there is a connection as regards the fact that Article 25 ensures the freedom to have one's own convictions, while freedom of information is concretely expressed in Paragraph 2 of Article 33, i.e. citizens are guaranteed the right to express critical opinions or views, to disseminate critical information with respect to the work of state institutions or officials. The constitutionally established prohibition against the persecution of people for criticism is a solid guarantee for the implementation of this constitutional right. ...

It is worth noting that the function of the norms of Paragraph 2 of Article 33 of the Constitution is not limited only by guaranteeing the subjective right of citizens to criticise the work of state institutions or officials. The said constitutional norms are also linked with the implementation of the fundamental provision consolidated in the Chapter “The State of Lithuania” of the Constitution, according to which state institutions serve the people.

The right to criticise the work of state institutions or their officials (Paragraph 2 of Article 33 of the Constitution)

The Constitutional Court's conclusion of 31 March 2004

Paragraph 2 of Article 33 of the Constitution provides that citizens are guaranteed the right to criticise the work of state institutions or their officials and to appeal against their decisions, and that persecution for criticism is prohibited. This constitutional civil right is inseparable from the right of everyone to have his/her own convictions and freely express them, from the right of everyone to impart information and ideas, which are enshrined in Article 25 of the Constitution. It should be noted that the freedom to express convictions and to impart information is incompatible with criminal actions – incitement to national, racial, religious, or social hatred, or incitement to violence or to discrimination, as well as defamation and disinformation.

The right to criticise state institutions or officials is a right of every citizen of the Republic of Lithuania, including state officials or politicians.

The right to criticise the work of state institutions or their officials and to appeal against their decisions (Paragraph 2 of Article 33 of the Constitution)

The Constitutional Court's ruling of 26 January 2006

Under Paragraph 2 of Article 33 of the Constitution, citizens are guaranteed the right to criticise the work of state institutions or their officials and to appeal against their decisions. This constitutional right of citizens is one of the rights by implementing which citizens may also participate in the governance of their state. The said provision of Paragraph 2 of Article 33 of the Constitution may not be interpreted only literally: it should [also] be interpreted [in the context of] Article 124 of the Constitution, under which the acts or actions of municipal councils or of their executive bodies or officials that violate the rights of citizens or organisations may be appealed against before a court. Thus, under Paragraph 2 of Article 33 of the Constitution, citizens are guaranteed the right to criticise not only the work of state institutions, but also the work of municipal institutions or their officials, and to appeal not only against decisions of state institutions, but also against decisions of municipal institutions or their officials.

... the right of citizens to criticise the work of state institutions or their officials and to appeal against their decisions, which is consolidated in Paragraph 2 of Article 33 of the Constitution, may not be identified with the right of petition of citizens, which is consolidated in Paragraph 3 of Article 33 of the Constitution, as each of these rights has its own specific content; this implies, *inter alia*, different procedures for implementing these rights, as well as certain particularities of their protection.

2.3.6. The right of petition

The right of petition (Paragraph 3 of Article 33 of the Constitution)

The Constitutional Court's ruling of 26 January 2006

The Constitution consolidates the right of citizens to participate in the governance of their state (Paragraph 1 of Article 33 of the Constitution). The constitutional right of petition is one of the rights by implementing which citizens may participate in the governance of their state. In the legal system of Lithuania, like in most European countries, a petition is usually understood as an application of an individual or a certain group to institutions of public power, which contains a demand (proposal) that a certain issue be resolved in cases where such an issue is important not only to the petitioner, but also to society or part thereof, and where, in order to resolve the said issue, it is necessary to amend or supplement an effective legal act or declare it no longer valid, or to pass a new legal act.

Under Paragraph 3 of Article 33 of the Constitution, the procedure for implementing the right of petition is established by law. Thus, the legislature has the duty to regulate the relationships connected with petitions not through any type of a legal act, but precisely by means of a law, in which all the most important elements of the procedure for implementing the right of petition must be established, i.e. such a law must define the reasons on the grounds of which it would be allowed to file a petition; it must define the institutions of public power with which petitions may be filed; it must define formal requirements with which petitions must comply; such a law must also define the procedure for filing petitions, the procedure for adopting decisions refusing to accept petitions, and for appealing against such decisions, etc.

According to the Constitution, when establishing the procedure for implementing the right of petition by law, the legislature has certain discretion; however, the legislature may not deny the very essence of the right of petition, nor may it artificially restrict or groundlessly burden the implementation of this constitutional right of citizens.

[...]

The constitutional concept of the right of petition implies that the constitutional right of petition of a citizen is deemed to have been implemented when a certain institution of public power with the respective powers considers a filed petition and makes a decision on granting or not granting the demands (proposals) of the petition.

The right to challenge before a court a decision, adopted by an institution of public power, not to deem an application to be a petition or to refuse to accept a petition for consideration

The Constitutional Court's decision of 28 June 2016

... when regulating the relationships connected with petitions and implementing the requirement, stemming from Paragraph 3 of Article 33 of the Constitution, to establish by law, *inter alia*, the procedure for adopting decisions on refusing to accept petitions and for filing appeals against such decisions, the legislature, invoking Paragraph 4 of Article 111 of the Constitution, whereby the competence of all the courts specified in Paragraphs 1 and 2 of Article 111 of the Constitution must be established by means of a law, has discretion to establish which court has the competence to consider cases on the protection of the constitutional right of petition of citizens, *inter alia*, cases dealing with refusals to grant a complaint filed against a decision not to deem an application to be a petition or not to accept a petition for consideration.

[...]

... under the Constitution, *inter alia*, Paragraph 1 of Article 30 and Paragraph 3 of Article 33 thereof, such a refusal of the Seimas (or another competent institution) to grant a complaint filed against a decision of the petitions commission not to deem an application to be a petition or to refuse to accept a petition for consideration where the said refusal is not based on the grounds laid down in ... laws or is based on such grounds that are not laid down in ... laws must be subject to the right to apply to a court. Consequently, a citizen who believes that his/her constitutional right consolidated in Paragraph 3 of Article 33 of the Constitution is violated (not implemented) due to the fact that an institution with the respective powers refused to deem his/her application a petition or to accept his/her petition not on the grounds laid down in ... laws must have the right to apply to a court regarding the defence of his/her possibly violated constitutional right of petition.

... it should be held that, under the Constitution, Paragraph 1 of Article 30 and Paragraph 3 of Article 33 thereof, the legislature, when regulating relationships connected with petitions and when establishing, by means of a law, *inter alia*, the procedure for filing petitions, as well as the procedure for adopting decisions on refusing to accept petitions and for filing appeals against such decisions, must establish such a legal regulation that would ensure the possibility of challenging before a court a final decision of an institution that accepts petitions where the said decision refuses to deem a particular application to be a petition or refuses to accept a petition and where such a decision is not based on the grounds laid down in ... laws or is based on such grounds that are not laid down in ... laws. The constitutional right of petition of citizens must be defended in a real and effective rather than perfunctory manner.

... a decision to refuse to deem an application filed by a citizen to be a petition or to refuse to accept a petition for consideration may be formalised by means of a substatutory legal act (as, for instance, a resolution of the Seimas, a resolution of the Seimas written in minutes, a decision of the Seimas, etc.); such a legal act must be adopted on the basis of the respective law and must not be in conflict with higher-ranking legal acts, *inter alia* (and, first of all), with the Constitution.

In view of the fact that, under the Constitution, while administering justice, courts (judges) must invoke only such laws that are not in conflict with the Constitution and may not apply any legal act that is

in conflict with the Constitution and/or another higher-ranking legal act, in cases where the decision to refuse to deem an application filed by a citizen to be a petition or to refuse to accept a petition for consideration is adopted by a state institution (Seimas, the Government, or the President of the Republic) investigation into whose acts in terms of their lawfulness falls within the competence of the Constitutional Court, the court (judge) that considers the case, when faced with doubts over the lawfulness of such an act, has the duty to suspend the consideration of the case and to apply to the Constitutional Court for determining the compliance of the said decision adopted by a state institution with higher-ranking legal acts, *inter alia* (and, first of all), with the Constitution, where such a decision, in the opinion of the court considering the case, is not based on the grounds laid down in ... laws or is based on such grounds that are not laid down in ... laws. As held by the Constitutional Court, in cases where a court considering such a case has doubts over the compliance of a legal act applicable in that case with the Constitution and/or higher-ranking legal acts and decides not to apply to the Constitutional Court in order that the said doubts are removed and a legal act the constitutionality of which is not questionable is applied in the case, such a court would risk adopting an unfair decision (*inter alia*, the rulings of 16 January 2006, 28 March 2006, and 25 January 2013).

In cases where a court (judge) that considers a case, upon assessing the evidence and other material of the case and upon establishing the relevant important circumstances, is not faced with doubts over the compliance, with higher-ranking legal acts, of such an act adopted by an institution of state power that refuses to deem an application of a citizen to be a petition or refuses to accept a petition for consideration ... such a court (judge) has the constitutional powers to consider the said case on its merits.

... it should also be noted that the legislature must clearly indicate, in a law, the manner of applying to a court regarding the defence of the constitutional right of petition of persons and must therein clearly specify which court has the jurisdiction in such matters (e.g. a certain law may establish special competence exercised by courts of general jurisdiction or specialised courts, or a new specialised court may be founded under Paragraph 2 of Article 111 of the Constitution, etc.) so that citizens could apply to that court, *inter alia*, when their constitutional right of petition has been violated by the decision of an institution of public power to refuse to deem an application filed by the citizen to be a petition or to refuse to accept a petition for consideration in cases where such a decision is not based on the grounds laid down in ... laws or is based on such grounds that are not laid down in ... laws. If the legislature failed to introduce the real possibilities of defending the right of petition of citizens, which is guaranteed in Paragraph 3 of Article 33 of the Constitution, and, *inter alia*, if it failed to establish the procedure for challenging before a court a final decision to refuse to deem an application to be a petition or to refuse to accept a petition for consideration, the effectiveness of the constitutional right of petition of citizens would be denied, the practical implementation of the said right would be restricted and, at the same time, the right of persons to apply to a court regarding the defence of their right of petition would be violated.

2.3.7. The right to form political parties

See 2.2. Civil (individual) rights and freedoms, 2.2.10. Freedom of association.

2.4. ECONOMIC, SOCIAL, AND CULTURAL RIGHTS

Chapter IV “The National Economy and Labour” of the Constitution

The Constitutional Court’s ruling of 24 September 1998

Chapter IV “The National Economy and Labour” of the Constitution consolidates not only freedom of individual economic activity and the national economy based on private ownership, but also the regulation of economic activity so that it serves the general welfare of the nation. In the norms of this chapter, the economic and social spheres are not opposed, but supplement one another.

2.4.1.1. Freedom of economic activity and economic initiative

The protection of the interests of consumers (Paragraph 5 of Article 46 of the Constitution)*The Constitutional Court's ruling of 18 October 2000*

Paragraph 5 of Article 46 of the Constitution lays down the duty of the state to defend the interests of consumers. This constitutional provision implies that various measures to protect the interests of consumers must be established by means of legal norms and that state institutions must exercise control over how economic operators comply with the established requirements, etc.

The legal regulation of pharmaceutical activities as a special sphere of economic activity (for more information, see 2.4.2. Social rights, 2.4.2.2. The right to healthcare)

The Constitutional Court's ruling of 14 March 2002

The specific nature of medicines and medicinal substances as goods constitutes the fact that pharmaceutical activities are a special area of economic activity. It is in the interest of every individual, all society, and the state that laws and other legal acts would establish such a legal regulation whereby pharmaceutical activities would be conducted only by individuals who have specialist training and hold the respective qualification. The duty of the legislature to establish such a legal regulation arises out of Paragraph 1 of Article 53 of the Constitution, according to which the state takes care of the health of people.

The protection of the interests of consumers (Paragraph 5 of Article 46 of the Constitution)*The Constitutional Court's ruling of 17 March 2003*

... the legislature, when regulating the relationships of a certain sector of economy in which a specific legal situation of certain economic operators is consolidated, and when providing for in other laws exceptions to the regulation governing the said relationships, must also establish additional legal measures that would ensure the protection of the rights and legitimate interests of consumers.

The guarantee of the protection of fair competition (Paragraph 4 of Article 46 of the Constitution)*The Constitutional Court's ruling of 26 January 2004*

The Constitutional Court, when interpreting the provision "The law ... shall protect freedom of fair competition" of Paragraph 4 of Article 46 of the Constitution, noted that the said provision also means the obligation of the legislature to establish, by means of a law, such a legal regulation whereby production and the market would not be monopolised, freedom of fair competition would be ensured, and measures for the protection of freedom of fair competition would be envisaged (ruling of 17 March 2003).

The constitutional guarantee of the protection of fair competition means, *inter alia*, the prohibition precluding state and municipal institutions that regulate economic activity from adopting decisions that distort or can distort fair competition.

The legal regulation of alcohol production and the alcohol market as a special sphere of economic activity*The Constitutional Court's ruling of 26 January 2004*

In its ruling of 9 July 1998, the Constitutional Court noted that the production, import, trade, or other realisation of alcohol need special regime of state regulation. However, economic activity must be regulated so that production and the market would not be monopolised, that fair competition and freedom of economic activity would be protected.

[...]

... the state and its institutions, having the discretion to establish a special legal regulation of alcohol production and the alcohol market, must not do so by choosing such means that would be inadequate to the objectives sought in cases where, by the said means, they would introduce the monopoly of the production of these products and their market and would groundlessly restrict freedom of economic activity and fair competition.

... various other means, except the introduction of a monopoly, may be established when seeking to attain socially significant objectives.

The constitutional values on which the national economy is based (Article 46 of the Constitution)

The Constitutional Court's ruling of 13 May 2005

The constitutional foundations of economic activity are established in Article 46 of the Constitution, which provides:

“The economy of Lithuania shall be based on the right of private ownership, freedom of individual economic activity, and economic initiative.

The State shall support economic efforts and initiative that are useful to society.

The State shall regulate economic activity so that it serves the general welfare of the Nation.

The law shall prohibit the monopolisation of production and the market, and shall protect freedom of fair competition.

The State shall defend the interests of the consumer.”

[...]

The provision “The economy of Lithuania shall be based on the right of private ownership, freedom of individual economic activity, and economic initiative” of Paragraph 1 of Article 46 of the Constitution defines the foundation of the national economy; the said foundation comprises these values: the right of private ownership, individual freedom of economic activity, and economic initiative (ruling of 14 March 2002). These three values – the right of private ownership, individual freedom of economic activity, and economic initiative – are interrelated; individual freedom of economic activity and economic initiative may not be separated from the right of private ownership. In its rulings of 20 April 1995 and 14 March 2002, the Constitutional Court held that freedom of economic activity and economic initiative are based on the innate personal freedom of an individual and the innate right to possess property. In its ruling of 14 March 2002, the Constitutional Court also held that the constitutional right of a person to property is an essential condition for implementing individual economic freedom and that, if the ownership right of a person is limited, individual economic freedom is also limited. In its ruling of 27 October 1998, the Constitutional Court held that Paragraph 1 of Article 46 of the Constitution attaches a fundamental role to private ownership – one of the main values on which the national economy is based.

[...]

The principles consolidated in Article 46 of the Constitution make up the whole – the constitutional foundation of the economy of this country (rulings of 6 October 1999, 6 December 2000, and 17 March 2003). The Constitutional Court has held that all provisions of Article 46 of the Constitution are interrelated and supplement one another (rulings of 23 February 2000, 18 October 2000, and 26 January 2004), that the principles established therein are reconciled, that there is a balance among them, and that each of these constitutional principles must be interpreted without denying another constitutional principle (rulings of 6 October 1999 and 17 March 2003).

Freedom of individual economic activity and economic initiative (Paragraph 1 of Article 46 of the Constitution)

The Constitutional Court's ruling of 13 May 2005

In its rulings, the Constitutional Court has held on more than one occasion that freedom of individual economic activity and economic initiative are a whole complex of legal possibilities, which creates the preconditions for a person to independently adopt decisions necessary for his/her economic activity.

Constitutional freedom of individual economic activity creates the conditions for implementing various strivings of a person (rulings of 6 October 1999, 14 March 2002, and 26 January 2004).

The provisions of Article 46 of the Constitution must also be interpreted in connection with other provisions of the Constitution. In its rulings, the Constitutional Court has held more than once that the notion of freedom of individual economic activity and economic initiative, as consolidated in Paragraph 1 of Article 46 of the Constitution, is a broad one: it implies, *inter alia*, the right of a person to freely choose an occupation or business, the freedom to conclude contracts, freedom of fair competition, etc. Freedom of individual economic activity is also inseparable from the requirement that regard must be paid to the equality of the rights of economic operators. Freedom of individual economic activity and economic initiative also imply the possibilities of restructuring economic operators without restrictions, changing the nature of their activity, as well as not obstructing the establishment of new economic operators or the liquidation of the existing ones when reacting to changes in the market; freedom of economic activity is inseparable from the possibility of entering the market without artificial barriers and exiting it without artificial barriers in cases where the said possibility is created for a person who is willing to engage in an economic activity or, conversely, who is willing to cease the said activity.

The Constitutional Court has stressed that freedom of economic activity is not absolute; a person makes use of it only when he/she follows certain obligatory requirements and limitations (rulings of 20 April 1995, 18 October 2000, 14 March 2002, and 9 April 2002). However, it is impermissible to deny, by means of established limitations, such essential provisions of freedom of economic activity as the equality of the rights of economic entities, fair competition, etc. Under the Constitution, the state is not allowed in an unrestricted manner to interfere with the economic activity of a person (ruling of 20 April 1995).

The obligation of the state to support economic efforts and initiative that are useful to society (Paragraph 2 of Article 46 of the Constitution)

The Constitutional Court's ruling of 13 May 2005

Paragraph 2 of Article 46 of the Constitution and other paragraphs of this article consolidate the obligation of the state to support economic efforts and initiative that are useful to society, which is also one of the main rules of regulating the national economy (ruling of 27 October 1998).

Interpreting the legal regulation consolidated in Paragraph 2 of Article 46 of the Constitution, the Constitutional Court has held that the provision “The State shall support economic efforts and initiative that are useful to society” of this paragraph means that the Constitution provides for the possibility for state institutions to assess the areas of economic activity according to their usefulness to society, that it is permitted to support certain areas of economic activity or certain economic efforts only after such an assessment is made, and that such an assessment of economic activity creates the necessary preconditions for the state to regulate economic activity so that it serves the general welfare of the nation (ruling of 13 February 1997). The said provision of Paragraph 2 of Article 46 of the Constitution creates the constitutional legal preconditions for a possible differentiated regulation of economic activity where the main criterion of this regulation would be the general welfare of the nation.

This provision also implies the duty of state institutions and their officials, as well of municipal institutions and their officials, not to hinder, by any their decisions or actions, any expression or development of the initiative of persons and not to disrupt or preclude their economic efforts, provided that their initiative or economic activities are not harmful to society, even if the usefulness of such initiative or economic efforts to society is not evident. Any decision or actions of state institutions and their officials, as well of municipal institutions and their officials, that do not permit the expression or development of the initiative of persons and that preclude certain economic efforts must be determined by the harmfulness of a particular initiative or economic efforts to society; otherwise, the requirements of Paragraph 2 of Article 46 of the Constitution would be deviated from.

Regulating economic activity so that it serves the general welfare of the nation (Paragraph 3 of Article 46 of the Constitution)

The Constitutional Court's ruling of 13 May 2005

The provision “The State shall regulate economic activity so that it serves the general welfare of the Nation” of Paragraph 3 of Article 46 of the Constitution is also directly linked with the provision “The economy of Lithuania shall be based on the right of private ownership, freedom of individual economic activity, and economic initiative” of Paragraph 1 of the same paragraph. Interpreting the legal regulation consolidated in Paragraph 3 of Article 46 of the Constitution, the Constitutional Court has held that, in the course of implementing individual freedom of economic activity (which ... is not absolute), the interests of society are impacted in various respects; therefore, the state regulates economic activity; in its rulings, the Constitutional Court has held on more than one occasion that the provision “The State shall regulate economic activity so that it serves the general welfare of the Nation” consolidates the constitutional principle that outlines the objectives, directions, means, and limits of the regulation of economic activity.

Interpreting the legal regulation consolidated in Paragraph 3 of Article 46 of the Constitution in a systemic manner (by relating it with, *inter alia*, the legal regulation consolidated in Paragraph 1 of the same article), the Constitutional Court has held that the state, in regulating economic activity, must follow the principle of balancing the interests of a person and society and ensure the interests of both a private person (economic operator) and society (rulings of 18 October 2000, 9 April 2002, 17 March 2003, and 26 January 2004).

As a rule, the regulation of economic activity is connected with the establishment of certain conditions for economic activity, the regulation of certain procedures, control over economic activity, as well as with certain limitations and prohibitions set with regard to this activity. In its ruling of 31 March 1994, the Constitutional Court held that, when a person takes part in economic activity, he/she may be subject to special limitations (*inter alia*, limitations on the right of ownership), which must be established by means of a law. In its rulings, the Constitutional Court has held more than once that, under the Constitution, it is allowed to limit the rights and freedoms of a person, as well as freedom of economic activity, if the following conditions are observed: the limitations are established by means of a law; the limitations are necessary in a democratic society in order to protect the rights and freedoms of other persons, the values consolidated in the Constitution, and the constitutionally important objectives; the limitations do not deny the nature and essence of rights and freedoms; and the constitutional principle of proportionality is followed.

It needs to be noted that the phrase “The State shall regulate economic activity” of Paragraph 3 of Article 46 of the Constitution means not the right of the state to administer all or certain economic activity at its discretion, but its right to establish the legal regulation of economic activity, i.e. to establish limitations (prohibitions) and conditions of economic activity, as well as to establish, in legal acts, a regulation governing the respective procedures, as well as control over economic activity where the said control would be based on the limitations (prohibitions), conditions, and procedures of economic activity that are established in legal acts. In this context, it needs to be noted that, in its ruling of 6 October 1999, interpreting the legal regulation consolidated in Article 46 of the Constitution, the Constitutional Court held: “A legal regulation is a form of establishing certain social order. The particularities of a legal regulation depend on the specific nature of the regulated social relationships. One area of such relationships is economic activity. The constitutional principle of freedom of individual economic activity and economic initiative determines that an intrinsic feature of the regulation of economic activity is the method of general permission: everything that is not forbidden is allowed. Thus, prohibitions are one of the ways of regulating economic activity. The economic activity of persons may be subject to limitation where it is necessary to defend the interests of consumers, to protect fair competition and other values consolidated in the Constitution. The prohibitions provided for in a law must be reasonable, non-discriminatory, and clearly formulated. Due to the complexity of economic activity and the dynamism of particular relationships, the regulation in this area may not be the same all the time, i.e. the proportion of prohibitions and permissions

may change; however, in the course of the alteration of the content of the legal regulation, the principles of the regulation concerning the national economy, which are consolidated in the Constitution, may not be denied.” It was also held in the same ruling of the Constitutional Court that “an individual may engage in any economic activity that is not prohibited by means of laws. A prohibition, established by means of a law, on freedom of economic activity of persons must be clear in every particular case and must be designated for the protection of the values consolidated in the Constitution, i.e. those of fair competition, the interests of consumers, etc.”

It also needs to be noted that not only the right but also the obligation of the state to regulate economic activity by means of legal acts so that it serves the general welfare of the nation is consolidated in the provision “The State shall regulate economic activity so that it serves the general welfare of the Nation” of Paragraph 3 of Article 46 of the Constitution. Thus, the Constitution consolidates the obligation of the state to seek the general welfare of the nation and the duty of the state, when seeking the general welfare of the nation, to regulate the economic activity in this country. Neither legislative power nor executive power, while enjoying the respective powers in the area of economic activity, may opt out of this constitutional obligation.

The legal regulation governing economic activity is not an objective in itself, but rather a means of social engineering and a way to achieve the welfare of the nation through law. In its rulings, the Constitutional Court has held that the right of the state, which is consolidated in Paragraph 3 of Article 46 of the Constitution, to regulate economic activity creates the constitutional preconditions for passing laws by which it is possible to react to situations in the national economy, as well as to the diversity of and changes in economic and social life (rulings of 28 February 1996, 15 March 1996, and 18 October 2000).

It needs to be stressed that Paragraph 3 of Article 46 of the Constitution clearly prescribes the direction of the legal regulation of economic activity: economic activity must serve the general welfare of the nation. The Constitutional Court has held that the general welfare of the nation is a rather general and broad criterion the application of which may be based on the concept of general welfare, as well as on the arguments of expediency (ruling of 13 February 1997). As a rule, the welfare of the nation is reflected by the consumption of material goods; however, the notion “the general welfare of the nation” may not be interpreted only by taking account of the satisfaction of the material needs of an individual, since it is possible to judge regarding the general welfare of the nation according to various criteria and from various manifestations – the social development of the nation, the possibilities of the self-expression of an individual, etc.; the content of the notion “the general welfare of the nation” is revealed in each concrete case by taking account of economic, social, and other important factors (rulings of 6 October 1999, 18 October 2000, and 26 January 2004). The Constitutional Court has emphasised that the welfare of the nation must not be perceived only in a material (or financial) sense; in addition, the Constitutional Court has stated that it is unlikely that it would be fair and right to seek material welfare in such a way that is harmful to human health (ruling of 13 February 1997).

At the same time, it needs to be stressed that the notion “the general welfare of the nation” of Paragraph 3 of Article 46 of the Constitution implies that, by means of regulating economic activity, the state must seek the welfare of not individual persons, but precisely the general welfare of the nation. On the other hand, “the general welfare of the nation”, which is indicated in Paragraph 3 of Article 46 of the Constitution, and the welfare, rights, and legitimate interests of an economic operator itself, i.e. an operator whose activity is regulated, as well as the interests of other persons who have established and hold the said economic operator or are otherwise related to that economic operator, may not be opposed. When taking account of the principle of balancing the interests of a person and society, which is consolidated in the Constitution, as well of the fact that, in the Constitution, freedom of individual economic activity and economic initiative are related to the right of private ownership, it is not allowed to substantiate or justify, by reference to serving the general welfare of the nation, which is indicated in Paragraph 3 of Article 46 of the Constitution, such a regulation governing economic activity that would limit the rights and legitimate interests of a certain economic operator more than necessary in order to ensure the public interest and to protect constitutional values; a legal regulation where a certain economic activity is unduly limited or

prohibited due to the fact that, from the standpoint of the legislature, such activity, although not harmful, is not useful to society, also must not be justified on the grounds of serving the welfare of the nation. The direction of the legal regulation of economic activity pointed out in Paragraph 3 of Article 46 of the Constitution must be interpreted as the constitutional obligation of the legislature and other law-making institutions to ensure a favourable legal environment for an economic activity that, while satisfying the interests of an economic operator, would also serve the general welfare of the nation. The Constitutional Court has held that the state, when regulating economic activity, may not establish any such a legal regulation whereby unfavourable and unequal economic conditions are established for economic operators, whereby their initiative is restricted and possibilities for the expression of such an initiative are not created (ruling of 9 April 2002). It also needs to be noted that, in its rulings of 14 March 2002 and 26 January 2004, the Constitutional Court held that, under the Constitution, no such legal regulation may be established whereby inappropriate conditions are created for the implementation of freedom of economic activity.

The constitutional values upon which the national economy is based are tightly linked to other constitutional values. The provisions of Article 46 of the Constitution must be interpreted by relating them with other provisions of the Constitution.

For instance, the Constitutional Court has held that all paragraphs of Article 46 of the Constitution are, first of all, designed for consolidating and strengthening private ownership in the economy of this country (ruling of 27 October 1998). If legal acts established such a legal regulation whereby the right of ownership is denied, freedom of individual economic activity and economic initiative, as well as freedom of fair competition, which is consolidated in Article 46 of the Constitution, would be limited in substance and other provisions of Article 46 of the Constitution would be violated (ruling of 23 February 2000).

Under the Constitution, the state, when regulating economic activity, must have regard to the constitutional requirement for the equality of the rights of economic operators, which is directly linked with the principle of the equality of the rights of all persons, as consolidated in Article 29 of the Constitution. Otherwise, the legal regulation of economic activity would not be considered to serve the general welfare of the nation. On the other hand, in its rulings, the Constitutional Court has also held on more than one occasion that, as such, the constitutional principle of the equality of the rights of persons (in this case, the equality of the rights of economic operators) does not deny the possibility of establishing, by means of a law, a diverse and differentiated legal regulation with respect to certain persons (in this case, economic operators) that belong to different categories provided that between those persons (in this case, economic operators) there are differences of such a nature that can objectively justify a differentiated regulation. A differentiated legal regulation in cases where it is applied to certain groups of persons that are characterised by the same features and where it pursues positive and socially meaningful objectives, or where the establishment of certain limitations or conditions is linked with the particularities of the regulated social relationships, should not be regarded as discriminatory (ruling of 11 November 1998). Singling out individual economic operators and the differentiated establishment of their legal situation must be linked with the objectives raised by the state in the sphere of economy, as well as with the striving for the respective arrangement of the economy of this country; therefore, the legislature, when taking account of the importance and nature of the regulated economic relationships, may regulate economic activity in a differentiated manner or establish certain conditions for the said activity (ruling of 18 October 2000).

As mentioned before, due to a specific nature, variety, and dynamism of economic activity, the regulation of concrete relationships in this area may not be the same all the time, i.e. the proportion of prohibitions and permissions is subject to change. In this context, it needs to be noted that the legal regulation of economic activity may also be changed in order to ensure the public interest. In changing the legal regulation of the relationships of economic activity, the state may also change the conditions of economic activity or may, in general, establish such a legal regulation under which certain economic activity must be discontinued. However, when changing the conditions of economic activity or discontinuing certain economic activity, the state must pay regard to the norms and principles of the Constitution, as well as the principle of the protection of legitimate expectations.

[...]

... if an economic operator acquired the right to engage in a certain economic activity and implemented this right under valid laws and other legal acts, in cases where the legal regulation of such economic activity is changed in a manner that the conditions of this economic activity are worsened or this economic activity is discontinued at all, then taking account of why the legal regulation of the said economic activity has been changed and to what extent it has been changed, also taking account of other important circumstances, the state may be under the duty to recompense (compensate) the economic operators and other persons for the losses that they have sustained due to the changed legal regulation.

... the foundations of the national economy, which are consolidated in Paragraph 1 of Article 46 of the Constitution, should also be interpreted by taking account of the provisions of Article 54 of the Constitution. The state must regulate economic activity so that, without denying the foundations of the national economy – the right of private ownership and individual freedom of economic activity and initiative – it would also ensure the public interest consolidated in Article 54 of the Constitution – the protection of the natural environment, wildlife and plants, individual objects of nature, areas of particular value, as well as the sustainable use of natural resources, their restoration and increase; the state is under the constitutional obligation to guarantee the said public interest.

Hunting as economic activity (on the right of owners to prohibit hunting on the plots of land that belong to them, see 2.2. Civil (individual) rights and freedoms, 2.2.5. The right of ownership, 2.2.5.3. Special objects of the right of ownership; on the protection of wildlife, see 2.4.2. Social rights, 2.4.2.3. The right to a healthy environment)

The Constitutional Court's ruling of 13 May 2005

... hunting is a certain type of economic activity or, more precisely, a constituent part of broader economic activity. It should be noted in this connection that, on the one hand, professional hunting as a source of income of a person is possible; on the other hand, the economic activity of a person can also include the planning and arrangement of hunting.

[...]

... In order to ensure the public interest – the protection and rational use, as well as the restoration and increase of wildlife (its resources) – the state, when regulating hunting as economic activity, may establish specific conditions of economic activity by means of a law, *inter alia*, the sizes of hunting grounds; they are established after taking account of, *inter alia*, the amount of the resources of huntable animals and the need for regulating their number. In doing so, the constitutional principle of proportionality must be applied and the ownership rights of owners of private plots of land, forests, and water bodies, as well as freedom and initiative of their economic activity, may not be denied.

Regulating economic activity in order to protect human health

The Constitutional Court's ruling of 29 September 2005

... human health and public health are among the most important values of society ... the protection of the health of people is a constitutionally important objective and a public interest; taking care of the health of people is a state function. Therefore, such a limitation on economic activity that aims at protecting the health of people should be treated as one designed for ensuring the general welfare of the nation and, as such, if the requirements that stem from the Constitution are observed, may not be regarded as violating the Constitution.

Under the Constitution, the state must regulate economic activity in order to ensure the implementation of the state function to take care of the health of people. Therefore, the state, while regulating economic activity, by means of laws, and while paying regard to the Constitution, may establish specific limitations on the economic activity that is, *inter alia*, related to the protection of human health, including advertising medicines and other information about medicines, the imparting of which can create the preconditions for inflicting harm on human health.

Regulating economic activity in order to ensure the protection of the natural environment

The Constitutional Court's ruling of 14 March 2006

Paragraph 3 of Article 46 of the Constitution prescribes that the state regulates economic activity so that it serves the general welfare of the nation. It is also necessary to pay regard to this constitutional imperative when regulating, by means of legal acts, the relationships linked with the ownership and use of land, forests, or water bodies, including those that are in areas of particular value, as well as with other activity in such locations.

In this context, it should be noted that, as the Constitutional Court held in its ruling of 13 May 2005, in order to ensure the protection of the natural environment, wildlife and plants, individual objects of nature, as well as the sustainable use of natural resources, their restoration and increase, and when regulating economic activity, the state may establish specific conditions and procedures for economic activity and means of control over economic activity, as well as certain limitations or prohibitions on the economic activity related with the use of particular natural resources; when regulating the relationships in connection with the protection of the natural environment and its individual objects, the use of natural resources, as well as their restoration and increase, when restricting the use of individual objects (natural resources) of the natural environment, or when obligating certain subjects of legal relationships to act in a corresponding manner or to refrain from certain actions, the state is bound by the imperative of social harmony, the principles of justice, reasonableness, and proportionality, which are consolidated in the Constitution, *inter alia*, in cases where such restrictions or obligations create interference with the implementation of the constitutional rights and freedoms of a person.

Forming and pursuing the state economic policy and the possibilities of challenging the compliance of the legal regulation of economic activity with higher-ranking legal acts

The Constitutional Court's ruling of 31 May 2006

... law, when it regulates social relationships (including those related to the national economy), defines the limits of the content of the state policy (also the economic policy) and establishes the permissible measures and methods for carrying out the said policy. However, it should be noted that, in itself, this does not deny the autonomy of the political process, the specificity of forming and pursuing the state policy (also the economic policy), or the independence of the legislative and the executive as state political powers or that of the institutions formed in a democratic way in establishing (according to their competence) the content of the state policy (also the economic policy) (by choosing, *inter alia*, its priorities), or the measures and methods for pursuing the said policy.

Under the Constitution, the Seimas, as the legislative state institution, and the Government, as a state institution of executive power, have very broad discretion to form and pursue the state economic policy (each according to its competence), as well as to regulate the economic activity by means of legal acts in the respective manner, certainly, without violating the Constitution and laws under any circumstances, *inter alia*, without exceeding the powers of these state institutions established in the Constitution and laws, by having regard to the requirements of the due process of law, which stem from the Constitution, as well as the constitutionally consolidated principles of a state under the rule of law, the separation of powers, responsible governance, the protection of legitimate expectations, legal clarity, legal certainty, and legal security. ... as such, an assessment of the content (*inter alia*, priorities), measures, and methods of the state economic policy (regardless of who assesses them), including the aspect of their reasonableness and expediency, even if it turns out later that there were better alternatives for choosing the economic policy (thus, also the fact that this economic policy formulated and carried out previously might reasonably be assessed negatively from the aspect of reasonableness and expediency), may not be a pretext to question the compliance of the legal regulation of economic activity where such a legal regulation conformed to the said economic policy (formulated and carried out previously) with higher-ranking legislation, *inter alia*, with the Constitution (also by initiating the respective constitutional justice cases at the Constitutional Court), with the exception of the situation where such a legal regulation already at the time of its

establishment in legal acts is clearly directed against the welfare of the nation, the interests of the State of Lithuania and its society and clearly denies the values defended and protected by the Constitution.

Moreover, neither the fact that legal acts establish a differentiated legal regulation with respect to a certain economic sector in cases where the said differentiated legal regulation is different from the legal regulation of other economic sectors, nor the fact that the legal regulation of a certain economic activity is changed in response to changes both in the market and in the economic conjuncture (as well as in the international economic conjuncture), may serve in itself as the aforementioned pretext, since ... the legal preconditions for a differentiated legal regulation of economic activity (when account is taken of the importance and nature of the regulated relationships) stem from the Constitution itself (*inter alia*, Paragraph 2 of Article 46 of the Constitution), the differentiated establishment of the legal situation of separate economic operators should be related to the objectives raised by the state in a certain economic sector and the striving for arranging the economy of this country in the respective manner; besides, due to a specific nature, variety, and dynamism of economic activity, the legal regulation of economic activity may not be the same all the time, i.e. the proportion of prohibitions and permissions is subject to change, *inter alia*, in order to ensure the public interest.

A differentiated legal regulation of the production of sugar as economic activity

The Constitutional Court's ruling of 31 May 2006

With regard to the scope of sugar production in Lithuania and to the significance of this sector of economy for a large part of Lithuanian people working in agriculture, taking into account the seasonal prevalence and other characteristics of sugar production, it needs to be held that a differentiated legal regulation may be established in legislation for this sector of economic activity, which may be different from the legal regulation of other sectors of economy; in addition, the legal regulation of this economic activity may be amended with response to the changing market and economic conjuncture. This differentiated legal regulation may also be such that sugar production as economic activity may be supported by the state, *inter alia*, by also using such means and applying such measures that would be different from those where the state supports other economic sectors (including agriculture). The provision of the envisaged support may be linked to the establishment of certain conditions for such economic activity.

It also needs to be noted that there are no legal preconditions for the Constitutional Court to assess the content of the state sugar policy or to assess the measures and methods of this policy with regard to their reasonableness and expediency, *inter alia*, to assess whether supporting (if so, then to what extent) sugar production (growing and processing sugar beets) is useful, promising, or expedient in any other regard and, if so, whether this economic activity should be supported more than any other economic (*inter alia*, agricultural) activity. The formation and pursuit of the state sugar policy, as well as choosing the means for its pursuit, is within the competence of the Seimas and the Government (which must follow, *inter alia*, laws passed by the Seimas). In doing so, the Seimas and the Government must observe the Constitution and laws, *inter alia*, they must not exceed the powers established for the said institutions in the Constitution and laws, and must pay regard to the constitutional principles of a state under the rule of law, the separation of powers, responsible governance, the protection of legitimate expectations, as well as the constitutional principles of legal clarity, legal certainty, and legal security.

Licensing economic activity (trade in alcohol products)

The Constitutional Court's ruling of 21 January 2008

The ... special state regulation regime, *inter alia*, the fact that wholesale and retail trade in alcoholic products is a licensed activity, as well as the fact that sanctions may and must be established for violations of this special state regulation regime, is a reasonable and constitutionally justifiable matter, *inter alia*, due to universally known negative consequences that may be caused by alcohol consumption for human health, public order, and the security of members of society, as well as for other values that are protected and defended by law. ...

It needs to be held that the legislature must establish not only the necessary requirements that must be complied with by the economic operators that seek to get licences to engage in wholesale and retail trade in alcoholic products (as well as in any other licensed activity), but also the requirements that must be followed by persons who received such licences, as well as the grounds and procedure for revoking the validity of the issued licences.

The protection of fair competition (*inter alia*, in the sphere of trade in alcohol products)

The Constitutional Court's ruling of 21 January 2008

... compliance with the conditions of licences and supervision over that compliance is a necessary precondition for fair competition in the respective market (in the market of trade in alcoholic products in the considered case). The protection of fair competition is a constitutional obligation of the state (Paragraph 4 of Article 46 of the Constitution).

[...]

... as held by the Constitutional Court, freedom of individual economic activity and economic initiative, among other things, imply freedom of fair competition (ruling of 31 May 2006). It has been held in this ruling of the Constitutional Court that, compliance with the conditions of licences and supervision over that compliance is a necessary precondition for fair competition in the respective market. Thus, freedom of economic activity of an economic operator that has violated the rules of fair competition laid down in the licence not only may, but normally must be limited.

Regulating trade in alcohol products as economic activity; the powers of municipal councils in forming, coordinating, and implementing the state alcohol policy

The Constitutional Court's ruling of 21 January 2008

Trade in alcoholic beverages is economic activity. In its acts, the Constitutional Court has held more than once that freedom of economic activity is not absolute; under Paragraph 3 of Article 46 of the Constitution, the state regulates economic activity so that it serves the general welfare of the nation.

[...]

... the legislature, especially when taking into account, *inter alia*, universally known negative consequences that may be caused by alcohol consumption for human health, public order, and the security of members of society, as well as for other values that are protected and defended by law ... as well as the fact that the state special regulation regime is reasonably applied to this field of activity, may establish, by means of a law, the powers of municipal councils to participate in the formation and coordination of the state alcohol control policies and the implementation thereof, *inter alia*, the legislature has the powers to limit or prohibit, in the territory of that municipality (as well as in enterprises that engage in retail trade and in public catering enterprises), trade in alcoholic beverages on official holidays and mass event days, which, as is known, are related to the increased intensity and activeness of social life, where this is necessary in order to attain positive universally important objectives, *inter alia*, to protect the rights and freedoms of other persons, as well as other values that are protected and defended by law.

[...]

It needs to be emphasised that the respective decisions of municipal councils must be clearly and rationally reasoned; they must not be arbitrary or voluntaristic. It also needs to be emphasised that all limitations and prohibitions on trade in alcoholic beverages must be strictly defined in terms of time and place; the economic activity of this kind (as well as any other economic activity) may not be limited more than necessary in order to ensure the protected and defended values, since, otherwise, the constitutional principle of proportionality would be disregarded.

In addition, information about the established limitations and prohibitions must be public; legal subjects must be informed about them in advance. Otherwise, the constitutional principle of the protection of legitimate expectations would be disregarded.

It also needs to be emphasised that the aforementioned limitations and prohibitions on trade in alcoholic beverages may not be selective; it is not allowed to discriminate against any persons (*inter alia*, economic operators) or grant privileges to any persons by means of the said limitations or prohibitions.

The essential conditions of economic activity must be laid down by means of a law

The Constitutional Court's ruling of 15 March 2008

In its ruling of 31 May 2006, the Constitutional Court held that, even though certain relationships of economic activity may only be regulated by means of laws, whereas other relationships of economic activity may be regulated by means of government resolutions, and still other relationships may be regulated by means of lower-ranking statutory legal acts, under the Constitution, the essential conditions for economic activity, as well as prohibitions and limitations that have an essential impact on the said activity, and various sanctions for certain violations of law may only be established by means of a law; thus, only by means of a law, it is permitted to establish such economic measures that may have an essential impact on economic activity and that may be applied when the established obligations are not fulfilled or are fulfilled improperly. The same also applies to the so-called economic sanctions categorised under the institution of administrative liability – such sanctions create the preconditions for making a negative impact on the economic situation of economic operators that are held legally liable (rulings of 3 November 2005 and 21 January 2008).

Licensing the purchase of the scrap and waste of non-precious metals meant for realisation as economic activity

The Constitutional Court's ruling of 15 March 2008

... the purchase of the scrap and waste of non-precious metals meant for realisation is a licensed activity; the licence is issued if an economic operator meets certain necessary requirements. There are not and there may not be any legal arguments that would allow stating that the licensing of the purchase of the scrap and waste of non-precious metals meant for realisation and the establishment of requirements for persons engaged in this economic activity are constitutionally groundless (*inter alia*, in particular, taking account of the fact that attempts may be made to sell to the purchasers also such scrap or waste of non-precious metals meant for realisation that was acquired by stealing property of another person, i.e. by committing a criminal act). Compliance with the conditions of this licensed activity and supervision over that compliance is a necessary precondition for the defence of the values consolidated in the Constitution, *inter alia*, the rights of ownership, the health of people, public order, the system of the economy of the state, the financial order, as well as fair competition.

It needs to be noted that the legislature has the powers to establish the necessary requirements that must be followed by the economic operators that seek to acquire licenses for engagement in the purchase of the scrap and waste of non-precious metals meant for realisation, the requirements that must be observed by persons who have acquired such licences, as well as enforcement measures (sanctions) applicable for violations of such requirements. It must be presumed that all economic operators that engage in licensed activity according to the available licences are aware of and understand the conditions that are laid down in legal acts and must be observed, and that they also know that, upon the violation of some of those conditions, the sanctions and enforcement measures established by means of laws will be applied to them. Freedom of economic activity of an economic operator that violates the rules of fair competition laid down in the licence not only may, but normally must, be limited (also by applying prohibition sanctions).

The obligation of the state to support economic efforts and initiative that are useful to society; state loan (Paragraph 2 of Article 46 of the Constitution)

The Constitutional Court's ruling of 30 June 2008

When interpreting the legal regulation laid down in Paragraph 2 of Article 46 of the Constitution, the Constitutional Court has held that the provision “The State shall support economic efforts and initiative that are useful to society” of this paragraph means that the Constitution provides for the possibility of state

institutions to assess the areas of economic activity according to their usefulness to society, that it is permitted to support certain areas of economic activity or certain economic efforts only after such an assessment is made, and that such an assessment of economic activity creates the necessary preconditions for the state to regulate economic activity so that it serves the general welfare of the nation (rulings of 13 February 1997 and 13 May 2005).

It needs to be noted that, under the Constitution, while satisfying the public interest, the state may choose various forms of supporting economic efforts and initiative. One of them may be support provided by the state to economic operators, *inter alia*, a state loan. The purpose of providing such support, *inter alia*, granting a state loan, to economic operators is to satisfy the public interest.

State support for economic operators is determined by various factors, *inter alia*, an economic situation in the state, the priorities of the development of the national economy, or the necessity to support certain social projects that are useful to society when seeking the general welfare of the nation.

Under the Constitution, state support provided to economic operators, *inter alia*, a state loan, must be based on a law. Laws must establish, *inter alia*, state institutions that have the right to adopt decisions regarding granting a state loan, as well as the grounds for providing such support. When regulating support for economic efforts and initiative that are useful to society, as well as granting a state loan, the legislature is bound by the requirements that stem from the Constitution, *inter alia*, the principles of responsible governance, transparency, lawfulness, the equality of rights, and fair competition.

When regulating the provision of state support, *inter alia*, granting a state loan, to economic operators, it is not allowed to establish any such a legal regulation whereby economic operators would be granted privileges or their initiative would be restricted.

In this context, account should be taken of the fact that, as the Constitutional Court held in its rulings of 30 September 2003, 8 July 2005, 5 July 2007, and 20 March 2008, it is not permitted to establish any such a legal regulation according to which property that belongs to the state by right of ownership would be possessed, used, or disposed of in such a manner that the interests or needs of only one social group or individual persons are satisfied or that this property does not serve the public interest, the need of society, or the welfare of the nation.

The relationships regarding a loan that emerge between the state and a person (economic operator) must be based, *inter alia*, on the principle of the freedom to conclude contracts; this principle must be assessed as a guarantee of the constitutional level. The freedom to conclude a contract is, first of all, a free expression of the will of its parties seeking to conclude a contract (ruling of 30 November 1996). This is the right of the parties to independently decide the questions of the content of a contract by not violating the requirements that stem from the Constitution and the respective provisions of laws that are not in conflict with the Constitution, as well as by not restricting the rights and freedoms of other persons.

It also needs to be noted that a person (economic operator), when making use of the support of the state, *inter alia*, a state loan, must fulfil the assumed obligations and not abuse law; it is necessary to ensure control over the proper use of such support and its repayment on time.

The obligation of the state to support economic efforts and initiative that are useful to society (Paragraph 2 of Article 46 of the Constitution)

The Constitutional Court's ruling of 2 March 2009

The Constitutional Court has held on more than one occasion that the provision of Paragraph 2 of Article 46 of the Constitution, whereby the state supports economic efforts and initiative that are useful to society, is one of the main rules of regulating the national economy, it creates, *inter alia*, the constitutional legal preconditions for a possible differentiated regulation of economic activity according to the criterion of the general welfare of the nation and implies the duty of state institutions and municipal institutions not to hinder any expression or development of initiative of persons, provided this initiative is not harmful to society.

The Constitutional Court has also held that it would be incorrect to understand the provision of Article 46 of the Constitution, under which the state supports economic efforts and initiative that are useful to society, as meaning “the duty of the state to indiscriminately support any economic efforts or activity”, since the state has the possibility of choice (ruling of 13 February 1997).

The legal regulation of economic activity in the electricity sector

The Constitutional Court’s ruling of 2 March 2009

... in order to regulate economic activity in such a way that it would serve the general welfare of the nation, the state may establish a differentiated legal regulation, which would be determined by the specificity of a certain economic activity; therefore, the state, taking account of the specificity of an economic activity, may use various measures of a legal regulation; the options of the legislature to establish the measures in order to ensure the general welfare of the nation in the electricity sector are determined by the particularities of electricity, *inter alia*, by limited resources of electricity, as well as by material, financial, and other important factors; the Constitution (*inter alia*, the provision of Paragraph 3 of Article 46 thereof, under which the state regulates economic activity so that it serves the general welfare of the nation) gives rise to the constitutional duty of the legislature to lay down such a legal regulation that would ensure the general welfare of the nation in view of the resources of the state and society, their material and financial capacities, as well as other important factors (ruling of 2 March 2009).

... the principles and values consolidated in the provisions of Article 46 of the Constitution, *inter alia*, the fact that the state regulates economic activity so that it serves the general welfare of the nation, as well as the fact that the law prohibits the monopolisation of production and the market, and protects freedom of fair competition, may not be opposed. When seeking the general welfare of the nation, a differentiated legal regulation is justified when taking account of the specificity of the sphere of the regulated economic activity. The said particularity of electricity – limited resources of electricity – determine the limited possibilities of the legislature to choose alternative measures in order to ensure the general welfare of the nation in the sphere of electricity. Thus, in order to ensure the general welfare of the nation in the sphere of electricity, a special legal regulation with regard to the specificity of electricity is necessary.

The prohibition on monopolising production and the market, as well as the guarantee of the protection of fair competition (Paragraph 4 of Article 46 of the Constitution)

The Constitutional Court’s ruling of 2 March 2009

Paragraph 4 of Article 46 of the Constitution prescribes that the law prohibits the monopolisation of production and the market, and protects freedom of fair competition.

The Constitutional Court has held on more than one occasion that the provision “the law shall prohibit the monopolisation of production and the market” means that it is not allowed to introduce a monopoly, i.e. it is not allowed to grant, by means of a law, exceptional rights to an economic operator to operate in a certain sector of economy due to which this sector would become monopolised; however, the prohibition on the monopolisation of production and the market does not mean that it is prohibited to state in a law, under certain circumstances, the existence of a monopoly in a certain sector of economy or otherwise to reflect factual monopolistic relationships and to regulate them accordingly, i.e. to create the legal preconditions in order to apply the respective requirements (including, *inter alia*, the restriction on the establishment of discriminatory prices, a state regulation of the size of prices and rates for the goods of the monopolistic market, the establishment of requirements for the quality of goods for the monopolistic subject of economy, as well as the control carried out by state institutions over how the economic operators follow the established requirements) with respect to the monopoly while defending the rights and legitimate interests of other economic operators and consumers. In addition, as held by the Constitutional Court, a monopoly is the exclusive right of a person, a group of persons, or the state to operate in a certain field (rulings of 20 April 1995 and 15 March 1996). A monopoly is such a state or a situation where a certain person or organisation may act without competition in a certain field (ruling of 20 April 1995). In addition,

as the Constitutional Court held in its ruling of 26 January 2004, under the Constitution, the introduction of a monopoly also means the unfounded granting of privileges to a certain subject of economy (groups thereof) and, at the same time, it is discrimination against other economic operators and a restriction on their freedom of economic activity; granting privileges to a certain group of economic operators should also be linked with discrimination against other economic operators and a restriction on their freedom of economic activity and initiative; this is incompatible with the requirements of Articles 29 and 46 of the Constitution; various other means, except the introduction of a monopoly, may be established when seeking to attain socially significant objectives.

The Constitutional Court has held on more than one occasion that the protection of fair competition is the main method to ensure harmony between the interests of a person and society while regulating economic activity, as well as to create the self-regulation of economy as a system, which promotes the optimal distribution of economic resources and their efficient use, economic growth, and the improvement of the welfare of consumers. However, as such, freedom of economic activity of a person does not guarantee competition; therefore, the state must protect fair competition. Thus, the constitutional guarantee of the protection of fair competition obliges the institutions of state power and municipal institutions to ensure freedom of fair competition by legal measures; such measures are the prohibition of such agreements among economic operators that seek to limit competition, or limit or may limit competition, the prohibition of abusing a dominant position, control over market concentration and the respective prohibitions on concentration, the prohibition of unfair competition, control over compliance with the rules for the protection of fair competition that are established in laws, and responsibility for violations thereof (rulings of 6 October 1999, 9 April 2002, 17 March 2003, and 26 January 2004).

The protection of the interests of consumers (Paragraph 5 of Article 46 of the Constitution)

The Constitutional Court's ruling of 2 March 2009

The Constitutional Court has held that the provision consolidated in Paragraph 5 of Article 46 of the Constitution, whereby the state defends the interests of the consumer, implies that laws and other legal acts should establish various measures of the protection of the interests of consumers, that state institutions should control economic operators as to how they observe such measures, and that the duty falls on state authority institutions to establish an additional legal regulation that would ensure the protection of the interests of consumers if production and the market are virtually concentrated in the area of certain economic relationships (rulings of 18 October 2000, 17 March 2003, 26 January 2004, and 5 March 2008).

... the constitutional duty of the state to defend the interests of consumers must be implemented, first of all, by the legislature by establishing the general measures and, taking account of the concrete specificity of the regulated economic activity, special measures of the protection and defence of the rights and interests of consumers.

... the specific features of relationships in certain spheres of economic activity are typical of the said spheres only; such specific features may imply, *inter alia*, the particularities of the regulation governing the relationships of the protection and defence of the rights and interests of consumers in certain fields of economic activity; in particular, the content of economic activity, its specific features, and the particularities of certain fields of economy may determine the necessity and need for a special regulation governing the ... relationships of the protection and defence of the rights and interests of consumers in a certain sphere of economic activity. Thus, the measures of the protection and defence of the rights and interests of consumers in certain spheres of economic activity may differ depending on the specific features of relationships in a concrete economic activity.

The specificity, diversity, and dynamism of economic activity implies that the regulation of concrete relationships in a certain sphere need not be the same all the time, i.e. it may change; this, *inter alia*, applies to the regulation of the relationships of the protection and defence of the rights and interests of consumers where this regulation may change and, in certain cases, must be changed.

The guarantee of the effective protection and defence of the rights and interests of consumers implies, *inter alia*, the fact that the legislature has the duty to establish an institutional system of the protection of

consumer rights and interests, i.e. the legislature must establish, by means of a law, the respective state institutions, clearly define their competence, and create the legal preconditions for such state institutions to ensure the real protection and defence of the rights and interests of consumers in the respective sphere of economic activity.

The protection of the interests of electricity consumers

The Constitutional Court's ruling of 29 September 2010

The imperatives consolidated in Article 46 of the Constitution, whereby the state regulates the economic activity so that it serves the general welfare of the nation (Paragraph 3) and whereby the state defends the interests of the consumer (Paragraph 5), give rise to the duty of the legislature to define, by means of a law, not only the criteria for the establishment of limits on electricity prices, but also the criteria for services, *inter alia*, criteria for the establishment of tariffs for connecting electricity equipment to the distribution network so that the said tariffs could be differentiated on the basis of customers who are objectively in different positions, also on the basis of the services required by customers, *inter alia*, the required costs related to the connection of the equipment of customers to the network, as well as on the basis of the fact whether a property contribution has been made by customers when connecting their equipment to the electricity network. Such criteria must be clear and reasonable so that, when establishing tariffs for such services, no preconditions would be created for abuse and, thus, violations of the rights and interests of electricity consumers. The imperatives of the protection of the rights of consumers, which are consolidated in Paragraph 5 of Article 46 of the Constitution, give rise to the duty of the legislature also to establish such a legal regulation that would ensure the effective protection of the rights of electricity consumers.

A differentiated legal regulation governing the organisation of games of chance as economic activity

The Constitutional Court's ruling of 21 June 2011

... the Constitution, *inter alia*, Articles 46 and 53 thereof, gives rise to the requirement that, when regulating the relationships of economic activity in the area of organising games of chance and taking account of the fact that organising games of chance may result in negative consequences for the health of people, public order, the security of members of society, and for other values that are protected and defended by law, the legislature must establish the grounds for organising games of chance as economic activity, as well as that the legislature may and, in certain situations, also must establish limitations and prohibitions on the activity of organising games of chance, *inter alia*, it must provide for cases where gaming activities are limited, as well as prohibit such activities in certain places in general.

[...]

... the legislature, by following the Constitution, *inter alia*, Paragraph 2 of Article 120 and Article 46 thereof, may confer on municipal councils the right to adopt a concrete decision regarding permission to organise games of chance in their local territory on the grounds established in laws.

At the same time, it needs to be noted that the Constitution, *inter alia*, Article 46 thereof, as well as the constitutional principle of a state under the rule of law, gives rise to the requirement that the respective decisions of municipal councils must be clearly substantiated and rationally reasoned, as well as that these decisions must not discriminate against any persons, nor may they grant any privileges to any persons.

Regulating the economic activity of operators administering pension funds

See 2.4.2. Social rights, 2.4.2.1. The right to social security, the ruling of 29 June 2012 (“The discretion of the legislature to choose a model of the system of old-age pensions, *inter alia*, where such a model is based on the accumulation of funds designated for future old-age pensions in special pension funds; regulating the economic activity of economic operators administering pension funds (Articles 46 and 52 of the Constitution)”).

Regulating economic activity so that it serves the general welfare of the nation (transfer of state-owned property into the ownership of other subjects) (Paragraph 3 of Article 46 of the Constitution)

The Constitutional Court's ruling of 2 April 2013

Under the Constitution, the state, when regulating economic activity, must ensure that state property is managed in such a manner that there would be no contradiction with the requirement, consolidated in Paragraph 3 of Article 46 of the Constitution, that the state must regulate economic activity so that it serves the general welfare of the nation (rulings of 24 January 1996 and 2 March 2009).

The provision of Paragraph 3 of Article 46 of the Constitution that the state regulates economic activity so that it serves the general welfare of the nation implies the duty of the state, as well as of the state institutions implementing state power and other state institutions, when paying regard to the norms and principles of the Constitution and taking account of a situation in the national economy, the variety and changes in the economy and social life, to establish such a legal regulation of economic activity that would serve the general welfare of the nation (rulings of 30 June 2008 and 6 January 2011).

The Constitutional Court has held on more than one occasion that it is not permitted to establish any such a legal regulation according to which property that belongs to the state by right of ownership would be transferred into the ownership of other subjects in order to satisfy the interests or needs of only one social group or separate persons where this would not serve the public interest, the needs of society, or the welfare of the nation (rulings of 30 September 2003, 8 July 2005, 5 July 2007, 23 November 2007, and 20 March 2008).

In the jurisprudence of the Constitutional Court, it has been held on more than one occasion that the implementation of the public interest, as an interest of society recognised by the state and protected by law, is one of the most important conditions for the existence and evolution of society itself (*inter alia*, the rulings of 6 May 1997, 13 May 2005, 21 September 2006, and 6 January 2011).

The transfer of state-owned property into the ownership of other subjects (including privatisation) may be constitutionally justifiable only when this may provide larger benefits to society, when the purpose of such transfer is the satisfaction of important and constitutionally justifiable needs and interests of society; such transfer (both repayable and non-repayable) would be constitutionally unfounded if it inflicted evident harm on society and violated the rights of other persons (rulings of 30 September 2003, 8 July 2005, and 23 November 2007).

The public interest is dynamic and subject to change (rulings of 8 July 2005, 21 September 2006, 15 May 2007, 30 June 2008, and 6 January 2011). The state may and, in certain cases, must change (expand, abridge, or otherwise modify) the regulation of economic activity (rulings of 30 June 2008 and 6 January 2011). Neither the legislative nor executive power, while enjoying the respective powers in the area of economic activity, may opt out of this constitutional obligation (ruling of 13 May 2005).

The legislature, when paying regard to the Constitution and taking account of various factors, may establish the regime (conditions and procedure for the use) of the property that is transferred into the ownership of other subjects in order to continue to ensure the interests of society and the welfare of the nation and to implement the values consolidated in the Constitution (rulings of 30 September 2003 and 8 July 2005).

Not only laws adopted by the legislature for regulating the transfer of state-owned property into the ownership of other subjects (*inter alia*, the privatisation of such property), but also the decisions of executive power regarding the implementation of these laws, must serve the public interest and the general welfare of the nation.

... the legislative and executive state powers, when amending the regulation of economic activity related to privatisation, are not allowed to deny the public interest and the requirements stemming from Article 46 of the Constitution (*inter alia*, Paragraph 3 thereof, under which the state regulates economic activity so that it serves the general welfare of the nation), as well as the constitutional principle of responsible governance.

The regulation of economic activity in cases where, *inter alia*, legal acts related to privatisation are adopted may be linked with the implementation of the rights and legitimate interests of various economic operators, shareholders, or creditors. The Constitution, *inter alia*, Article 46 thereof, as well as the constitutional principle of responsible governance, gives rise to the duty of the legislature, when it regulates the relationships of privatisation, to precisely define the powers of employees and officials of state and municipal institutions and to determine their responsibility. Decisions adopted by the institutions of executive power in the area of privatisation (especially those through which certain previous decisions establishing particular obligations are amended) must be rationally reasoned and the impact of such decisions on, *inter alia*, the economy of this country and the finances of the state must be properly assessed. The said decisions may not be arbitrary.

The regulation of the activity of healthcare establishments where this activity is understood as economic activity

See 2.4.2. Social rights, 2.4.2.2. The right to healthcare, ruling of 16 May 2013 (“The regulation of the activity of healthcare establishments where this activity is understood as economic activity; the distribution of public funds among healthcare establishments (Article 46 and Paragraph 1 of Article 53 of the Constitution)”).

The legal regulation of economic activity in the financial sector

The Constitutional Court’s ruling of 5 July 2013

The Constitutional Court has noted that, in order to regulate economic activity in such a way that it would serve the general welfare of the nation, the state may establish a differentiated legal regulation determined by the specificity of a certain economic activity; the state, by taking account of the specificity of a certain economic activity, may use different measures laid down in a legal regulation (rulings of 2 March 2009, 3 February 2010, and 24 May 2013). The state, when regulating economic activity, must follow the principle of the reconciliation of the interests of a person and society and must ensure the interests of both a private person (economic operator) and society (*inter alia*, the rulings of 13 May 2005, 6 January 2011, 21 June 2011, and 24 May 2013).

The Constitutional Court has also pointed out that the establishment of certain exceptions to a certain general legal regulation may be constitutionally justified if these exceptions are aimed at ensuring a constitutionally justifiable and universally important interest, and only to the extent to which this is sought; the said exceptions must be proportionate to the sought constitutionally justifiable objective and must not limit the rights of the subjects concerned more than necessary to ensure the said constitutionally justifiable and universally significant interest (rulings of 12 December 2005, 2 March 2009, and 24 May 2013).

The economic activity carried out in the area of finances, *inter alia*, the provision of financial services, constitutes one of the specific types of economic activity; the said activity is characterised, *inter alia*, by the fact that when this activity is carried out, a direct influence is exerted on the national financial system, as well as the entire national economy; the stability and efficiency of the financial system constitute a significant public interest and, in terms of the functioning of the market, form an essential condition that determines the growth of the national economy; therefore, under the Constitution, *inter alia*, Paragraph 3 of Article 46 thereof, in order to regulate financial economic activity in such a way that it would serve the general welfare of the nation, the legislature is obliged to establish such a legal regulation that would ensure the security, stability, and reliability of the financial system functioning in this country; when establishing such a legal regulation, the legislature must pay regard to the imperatives stemming from the Constitution, *inter alia*, from the constitutional principle of a state under the rule of law (ruling of 24 May 2013).

... one of the means of guaranteeing the security, stability, and reliability of the financial system is to establish such a legal regulation that would be aimed at ensuring the trust of persons in financial institutions, *inter alia*, in banks. The said objective can be achieved by various means: *inter alia*, it is possible to establish a legal regulation under which the creditors (depositors, investors) of a bank in bankruptcy

proceedings would be, under the established conditions, compensated for the incurred losses. The legislature may opt for various models of compensation for losses, *inter alia*, the insurance of deposits and investment. When establishing such a legal regulation, the legislature must observe the principle of the reconciliation of the interests of a person and those of society, as well as other constitutional imperatives.

[...]

... the legislature, when establishing a legal regulation aimed at ensuring the stability and effectiveness of the financial system, is obliged to pay regard to the constitutional principle of the equality of the rights of subjects taking part in financial activity. In order to regulate financial economic activity in such a way that it would serve the general welfare of the nation, and in order to consolidate the legal regulation aimed at ensuring the security, stability, and reliability of the financial system functioning in this country, the legislature may establish a diverse and differentiated legal regulation with respect to the creditors of a financial institution (*inter alia*, a bank) who belong to different categories. When establishing a differentiated legal regulation in the area of financial activity, the legislature is obliged to pay regard to the requirements concerning the balance of constitutional values and social harmony, also the constitutional principles of justice and proportionality, as well as the requirements stemming from Paragraph 2 of Article 127 and Paragraph 1 of Article 128 of the Constitution.

Freedom of individual economic activity and economic initiative (Paragraph 1 of Article 46 of the Constitution)

The Constitutional Court's ruling of 9 May 2014

Paragraph 1 of Article 46 of the Constitution prescribes that the economy of Lithuania is based on the right of private ownership, freedom of individual economic activity, and economic initiative. In its rulings, the Constitutional Court has held on more than one occasion that the notion of freedom of individual economic activity and economic initiative, which is consolidated in Paragraph 1 of Article 46 of the Constitution, is broad and is based on the innate personal freedom of an individual and the innate right to possess property. This notion includes the right to freely choose a business, the right to freely conclude contracts, the freedom of fair competition, the equality of the rights of economic operators, etc. Freedom of individual economic activity and economic initiative are a whole complex of legal possibilities, which creates the preconditions for a person to independently adopt decisions necessary for his/her economic activity. Freedom of economic activity is not absolute and a person may exercise it in observance of certain mandatory requirements and limitations (rulings of 13 May 2005, 31 May 2006, 5 March 2008, and 6 January 2011). On the other hand, under the Constitution, the state is not allowed to interfere with individual economic activity without any limitations; therefore, it is impermissible, by means of the established limitations, to deny such essential provisions of freedom of economic activity as the equality of the rights of economic operators, fair competition, etc.

Regulating economic activity in order to protect human health and the environment (Paragraph 3 of Article 46, Paragraphs 1 and 3 of Article 53, and Article 54 of the Constitution)

The Constitutional Court's ruling of 9 May 2014

... when the legislature regulates economic activity, it faces the requirement stemming from the Constitution, *inter alia*, Paragraph 3 of Article 46, Paragraphs 1 and 3 of Article 53, and Article 54 thereof, to establish such limitations on the said activity where those limitations would aim to ensure the general welfare of the nation, *inter alia*, to protect against harmful impacts on human health and the environment, to use natural resources in a rational manner, and to remedy the damage caused to the natural environment. In the course of fulfilling this requirement, regard must be paid to the requirements that stem from the Constitution, *inter alia*, from the constitutional principle of a state under the rule of law. Among other things, this means that, by means of legal regulation, it is possible to establish such duties of economic operators that would not restrict freedom of their activity more than necessary in order to achieve the constitutionally significant objectives regarding the protection of human health and environmental protection.

It should be noted that, when a law establishes the duties of economic entities in relation to the protection of human health and environmental protection against harmful influences, as well as in relation to the rational use of natural resources and compensation for the harm caused to the natural environment, the Government may also be assigned to adopt statutory legal acts necessary for the implementation of such a law and, *inter alia*, for the regulation of the performance of the duties of economic operators where such duties are established by the said law.

[...]

... when regulating the organisation of waste management as one of the types of economic activity, the legislature must take account of the fact that improperly managed waste endangers the environment, as well as human and public health, and it must also have regard to the imperative of using natural resources in a rational manner. Therefore ... it is possible to establish the duty of economic operators, where it is technically possible, first of all, to recycle waste in such a way that would allow making products from it intended for the same or other purposes or, if there is no possibility of recycling this waste, to use it otherwise without making any significant negative impacts on human and public health, as well as the environment; the procedure for the fulfilment of this duty may be specified in detail by the legal acts of the Government.

The legal regulation of the economic activity of passenger carriers

The Constitutional Court's ruling of 15 January 2015

The Constitutional Court has ... held that the legislature, being under the duty to regulate economic activity so that it serves the general welfare of the nation, also regulates, by means of laws, the economic activity of passenger carriers, lays down conditions for it, requirements for carrying out this activity, limitations and prohibitions on this activity, as well as control over the economic activity of passenger carriers (ruling of 5 March 2008). In doing so, the legislature must pay regard to the imperatives stemming from the Constitution, *inter alia*, Articles 29 and 46 thereof.

It should also be noted that the legislature, when regulating economic activity in the area of the carriage of passengers, may and, in some cases, also must delegate some functions of the organisation of this activity to municipalities. Under the Constitution, the functions of municipalities may be established only by means of a law; none of the functions assigned to municipalities means absolute autonomy of municipalities in the respective area (rulings of 24 December 2002, 8 July 2005, and 5 March 2008); while performing the assigned functions, municipalities must pay regard to the Constitution and laws (ruling of 5 March 2008).

... the legislature, having delegated certain functions of the organisation of the activities of the carriage of passengers to municipalities, must, in accordance with the imperatives stemming from Article 46 of the Constitution, *inter alia*, the requirement that economic activity must serve the general welfare of the nation, as well as the requirements for fair competition and the protection of consumer rights, which are consolidated in the said article, and also in accordance with the imperative of the equality of the rights of persons, as consolidated in Article 29 of the Constitution, establish such a legal regulation that municipalities would ensure freedom of fair competition (*inter alia*, would ensure that the means and methods of its protection are provided for and that the market for the carriage of passengers is not monopolised) and consumer rights in the area of the carriage of passengers (*inter alia*, would ensure that consumers receive quality and affordable services in line with their interests even in cases where the provision of such services is disadvantageous), as well as would not deny the equality of the rights of passenger carriers.

The duty of the legislature to reconcile different constitutional values when regulating economic activity (*inter alia*, in the area of waste management); the duty of municipalities organising waste management to pay regard to the Constitution and laws

The Constitutional Court's ruling of 5 March 2015

... the principles consolidated in Article 46 of the Constitution make up the whole – the constitutional basis for the economy of this country; the constitutional values on which the national economy is based are tightly linked with other constitutional values. In view of this fact, it should be noted that the duty, consolidated in Paragraph 3 of Article 46 of the Constitution, that the state must regulate economic activity so that it serves the general welfare of the nation implies the requirement that the legislature, in regulating economic activity (*inter alia*, in the area of waste management), must reconcile different constitutional values, *inter alia*, those protected under Articles 29, 46, 53, and 54 of the Constitution: freedom of individual economic activity and economic initiative, freedom of fair competition, the protection of consumer interests, the equality of the rights of economic operators, and the protection of human health and the environment.

... the legislature, in cases where it regulates the relationships connected with waste management and delegates certain functions to municipalities in the area of the organisation of waste management, under Paragraph 3 of Article 46 of the Constitution, is obliged to regulate this activity in such a way that it serves the general welfare of the nation: *inter alia*, the legislature must pay regard to the imperatives stemming from Article 46 of the Constitution, *inter alia*, the requirements, consolidated therein, for ensuring freedom of individual economic activity and economic initiative and protecting fair competition and consumer rights, also the imperative, consolidated in Article 29 of the Constitution, for the equality of the rights of persons, as well as the imperatives, consolidated in Articles 53 and 54 of the Constitution, for the protection of human health and the environment. Having regard to these constitutional imperatives, the legislature must lay down such a legal regulation governing the organisation of waste management under which, in the area at issue, municipalities would ensure freedom of fair competition (*inter alia*, would ensure that the market in waste management is not monopolised and the equality of the rights of participants in this market is not denied), as well as the protection of consumer rights, human health, and the environment (*inter alia*, the accessibility, as well as the uninterrupted provision and good quality, of waste management services).

[...]

... under the Constitution, municipalities, while acting freely and independently within their competence defined by the laws regulating economic activity (*inter alia*, waste management), are bound by the principles forming the constitutional foundation of the economy of this country, as well as by other constitutional imperatives. This means that, in the area of waste management, municipalities must pay regard to the requirement, as implied by the constitutional imperative of fair competition, that waste managers must be selected by means of a tender according to their capability to provide uninterrupted, good quality, and accessible services. It is possible to waive this requirement only on the objectively justified grounds; such grounds should not include the mere fact that there is an economic operator set up by a municipality and operating in the area of waste management.

The protection of the interests of consumers (*inter alia*, in the energy sector) (Paragraph 5 of Article 46 of the Constitution)

The Constitutional Court's ruling of 3 April 2015

... the Constitutional Court has held that the provision consolidated in Paragraph 5 of Article 46 of the Constitution, whereby the state defends the interests of the consumer, implies that laws and other legal acts must establish various measures of the protection of the interests of consumers and that state institutions must exercise control over how economic operators observe such measures (*inter alia*, the rulings of 18 October 2000, 17 March 2003, 2 March 2009, and 29 September 2010).

The Constitution, *inter alia*, from Paragraph 5 of Article 46 thereof, gives rise to the imperative of the guarantee of the effective protection of the rights and interests of consumers. This imperative implies that the legislature must establish such a legal regulation that would create the preconditions for each consumer to receive electricity under non-discriminatory conditions and would ensure that electricity is supplied to all consumers in a safe and reliable manner (rulings of 2 March 2009 and 29 September 2010). The establishment of limits on prices is one of the ways to defend the interests of consumers; the legislature has the duty to define, by means of a law, the criteria for the establishment of limits on electricity prices; such criteria and the methodology and procedure for establishing them must be clear, transparent, and reasonable so that no preconditions would be created for abuse when establishing electricity prices and, thus, so that no preconditions would be created for violating the rights and interests of the consumers of electricity (ruling of 2 March 2009).

These provisions of the official constitutional doctrine *mutatis mutandis* also apply in the sphere of the protection of the rights and interests of consumers of natural gas.

Regulating economic activity in the energy sector in order to ensure the security and reliability of the energy system

The Constitutional Court's ruling of 3 April 2015

... the economic activity conducted in the sphere of energy, *inter alia*, the provision of all consumers with energy resources (*inter alia*, natural gas), is a specific economic activity; such an activity is characterised, among other things, by the fact that conducting this activity has a direct influence on the entire national economy. The security and reliability of the energy system is a constitutionally important objective that justifies a particular differentiated legal regulation of economic activity in this sphere on the grounds of the public interest. Thus, when regulating, in accordance with the Constitution, *inter alia*, Paragraph 3 of Article 46 thereof, the economic activity in the sphere of energy so that it serves the general welfare of the nation, the legislature is obliged to establish such a legal regulation that would ensure the security, stability, and reliability of the energy system, *inter alia*, the possibility of receiving energy supplies from multiple sources (suppliers) under non-discriminatory conditions and at fair prices. For this purpose, the projects of special importance for the state designed for eliminating the dependence of the national economy upon a monopolist supplier of certain energy resources (*inter alia*, natural gas) may be implemented under the procedure and conditions established by means of a law. The special importance of these projects for the state implies that the legislature, having established the legal regulation assigning certain state-controlled economic operators to implement these projects, must also establish an effective mechanism of control over the implementation of such projects.

... under Paragraph 3 of Article 46 of the Constitution, the legislature, when regulating the economic activity in the sphere of energy so that it serves the general welfare of the nation and being under the obligation to ensure the effective implementation of the projects of special importance for the state, may, *inter alia*, establish such a legal regulation that would enable the financing of the said projects from multiple sources, *inter alia*, including the funds raised from consumers of energy resources. These funds may be accumulated by applying the rate of a state-regulated price, where such a rate is established, *inter alia*, in view of the law-established obligations of the economic operators implementing the aforesaid projects of special importance for the state to provide public services in the sphere of energy – to install and operate the energy infrastructure aimed to ensure that energy resources would be supplied in a secure and reliable manner.

Having chosen such financing of the projects of special importance for the state that is based, *inter alia*, on the funds raised from consumers of energy resources, the legislature, while following the imperative, arising out of Paragraph 5 of Article 46 of the Constitution, for ensuring the protection of the rights and interests of consumers, must establish an effective mechanism of control over the justified costs of the implementation of such projects so that the inclusion of these costs into the price of energy resources would not create the preconditions for abuse and, thus, for violating the interests of consumers.

The Constitutional Court has held on more than one occasion that the constitutional values on which the national economy is based are tightly linked with other constitutional values.

The content of the provisions of Article 46 of the Constitution should be interpreted in a systemic manner and in the context of the entire constitutional regulation, by taking account, *inter alia*, of the provisions of Paragraph 2 of Article 128 of the Constitution (ruling of 2 March 2009).

In interpreting Paragraph 2 of Article 128 of the Constitution, which provides that the procedure for the possession, use, and disposal of state-owned property are established by law, the Constitutional Court has held that, under the Constitution, the state is a subject of the right of ownership (rulings of 17 June 1997, 30 September 2003, and 30 October 2008); property that belongs to the state by right of ownership must be managed in such a way that it would serve the general welfare of the nation and the interest of society at large (rulings of 30 September 2003, 30 October 2008, and 24 October 2012).

The provisions of Paragraph 2 of Article 128 of the Constitution should be interpreted bearing in mind the constitutional concept of the state. The Constitutional Court has held that, in performing its functions, the state should act in the interests of society at large (*inter alia*, the rulings of 13 December 2004, 30 October 2008, and 8 June 2009); the mission of the state is to ensure human rights and freedoms, as well as to guarantee the public interest (*inter alia*, the rulings of 30 December 2003, 13 December 2004, and 21 December 2006); the public interest, as a common interest of the state, all society or part of society, must be balanced with the autonomous interests of individuals, because not only the public interest, but also the rights of persons, are constitutional values; a fair balance must be ensured in this sphere (ruling of 21 September 2006).

In its ruling of 30 September 2003, the Constitutional Court held that the provisions of Paragraph 2 of Article 128 of the Constitution are inseparable from the provisions of the Constitution that consolidate such constitutional values as the independence of the state and the integrity of its territory, the security of the state, the welfare of the nation, public order, and justice. One of the fundamental constitutional values consolidated in Article 1 of the Constitution – the independence of the state – is closely interrelated with the geopolitical orientation of the State of Lithuania, which is consolidated in the Constitution and implies, *inter alia*, membership of the Republic of Lithuania in the EU, as well as the necessity to fulfil the respective international obligations related to the said membership (rulings of 7 July 2011 and 24 January 2014). ... the obligations of the Republic of Lithuania arising from its membership in the EU in the sphere of energy, by means of which efforts are made to ensure the security and reliability of the energy system, are inseparable from the duty of the state, consolidated in Paragraph 3 of Article 46 of the Constitution, to ensure the general welfare of the nation.

The content of the provisions of Article 46 of the Constitution should be interpreted by taking account of the provisions of Article 94 thereof, which consolidate the powers of the Government as an institution of state power (ruling of 26 February 2010). Under Item 1 of Article 94 of the Constitution, the Government manages national affairs and guarantees state security. In interpreting the provisions of Article 94 of the Constitution, the Constitutional Court has held that, when the Government exercises the functions established for it by the Constitution, its powers may depend on the economic and social situation of this country, the problems at issue, and a number of other circumstances, upon the change of which the content and scope of the powers of the Government may also be changed; only the main powers of the Government are provided for in the Constitution (ruling of 23 November 1999). Everything that the Government performs, when implementing the powers established for it in the Constitution and laws, falls within managing the affairs of state governance (ruling of 29 November 2001). Under the Constitution, the Government, as an institution of the executive, has broad discretion in forming and pursuing the economic policy of the state and in regulating economic activity accordingly (ruling of 23 May 2007).

In the context of the constitutional justice case at issue, it should be noted that, under the Constitution, *inter alia*, under Paragraph 3 of Article 46 thereof, if it is interpreted together with Item 1 of Article 94, which establishes the competence of the Government to manage national affairs and guarantee state security, and Paragraph 2 of Article 128, which consolidates the constitutional grounds for the possession, use, and disposal of state-owned property, the legislature, in regulating the economic activity in the sphere

of energy so that it serves the general welfare of the nation, may consolidate, by means of both general norms and special norms of a legal regulation, the powers of the Government to use state-controlled economic operators as an instrument of the economic policy in order to meet public interests in the sphere of economy. In implementing these powers and choosing a concrete state-controlled economic operator for carrying out a certain project that is of special importance for the state, the Government must pay regard, *inter alia*, to the constitutional principle of responsible governance.

The legal regulation of economic activity in the electricity sector

The Constitutional Court's ruling of 29 October 2015

... the specific nature of the economic activity carried out in the energy sphere, *inter alia*, the supply of all consumers with energy resources, also the necessity (arising, *inter alia*, from the obligations of membership of the Republic of Lithuania in the European Union) to ensure the security and reliability of the energy system, as well as the objective to ensure environmental protection by promoting, in various ways, the use of renewable energy sources, determine the particularities of the legal regulation governing the public interest services that are provided with a view to achieving the said objectives. Having regard to the Constitution, *inter alia*, the principle of the reconciliation of the interests of a person and society, and ensuring the possibility of obtaining energy resources from various sources, it is possible to establish such a legal regulation of public services in the electricity sphere that lays down the duty for all persons consuming electricity to pay for these services once they are ensured the possibility of receiving electricity required for satisfying their needs.

Regulating economic activity related to the use of the subsurface (Paragraph 3 of Article 46, Paragraphs 1 and 3 of Article 53, and Article 54 of the Constitution)

See 2.4.2. Social rights, 2.4.2.3. The right to a healthy environment, the ruling of 16 December 2015 (“The duty of the state, when regulating economic and other activity related to the use of the subsurface, to ensure the protection of the subsurface and other objects of the natural environment (land, water, air, plants, wildlife) and human health, as well as the rational use of natural resources (Paragraph 3 of Article 46, Paragraphs 1 and 3 of Article 53, and Article 54 of the Constitution)”).

The protection of the interests of consumers in the heat sector

The Constitutional Court's ruling of 7 June 2016

... the specific nature of the economic activity carried out in the energy sphere – the supply of all consumers with energy resources – is determined, *inter alia*, by the necessity, in accordance with the public interests (arising, *inter alia*, from the obligations of membership of the Republic of Lithuania in the European Union), to ensure energy efficiency as a means of striving for the security and reliability of the energy system and to reduce greenhouse gas emissions.

[...]

... the Constitution, *inter alia*, the provision of Paragraph 5 of Article 46 of the Constitution, whereby the state defends the interests of consumers, gives rise to the duty of the legislature to adopt such a legal regulation governing the relationships related to heat supply where this regulation would consolidate the provisions prohibiting heat suppliers from acting as the supervisors of the heating and hot water systems of buildings; having established that the interests of certain persons associated with the heat supplier are contrary to the interest of heat consumers to consume heat energy in an economical and rational manner, the duty stems from the Constitution, *inter alia*, Paragraph 5 of Article 46 thereof, for the legislature to impose the above-mentioned prohibiting provisions also on the said persons; if it transpires that the provisions that are consolidated in laws and prohibit certain persons, *inter alia*, operators of a certain type or those conducting economic activity in a certain territory, from acting as the supervisors (operators) of the heating and hot water systems of buildings do not (would not) ensure the rendering, at competitive prices, of appropriate quality services related to the supervision of the heating and hot water system of a

building, the Constitution, *inter alia*, Paragraph 3 of Article 46 thereof, gives rise to the duty of the legislature to establish such a legal regulation that would provide for the respective exceptions to the prohibition, applied to heat suppliers and certain related persons, on acting as the supervisors (operators) of the heating and hot water systems of buildings.

It should also be noted that, in cases where, in the sphere of the economic activity related to heat supply, the circumstances leading to the conflict of interests between a certain person (persons) and heat consumers arise or cease to exist, the Constitution, *inter alia*, the constitutional principle of a state under the rule of law, gives rise to the duty of the legislature to accordingly amend the legal regulation that defines the circle of persons prohibited from acting as the supervisors (operators) of the heating and hot water systems of buildings.

[...]

... in view of the fact that it is in the equal interest of all owners of flats or other premises in blocks of flats, who are consumers of heat and hot water, to receive quality services in the maintenance of the heating and hot water systems of buildings and on the basis of the provision of the official constitutional doctrine, according to which legal acts may not demand impossible things (*lex non cogit ad impossibilia*), it should be held that the Constitution, *inter alia*, Paragraph 3 of Article 46 thereof, and the constitutional principle of a state under the rule of law give rise to the duty of the legislature, after assessing the particularities of the municipal heat sector, the circle of operators carrying out or having the possibility of carrying out the activity related to the maintenance of the heating and hot water systems of buildings, and other important circumstances, to determine the size of residential areas in which the imposed limitations on certain persons on providing the services of the maintenance of the heating and hot water systems of buildings would ensure the protection of the rights of the aforementioned consumers and, conversely, the size of residential areas in which, in the absence of any operator (operators) capable of carrying out the said maintenance, the interest of the owners, as well as the public interest, to ensure the proper maintenance of the heating and hot water systems of buildings would be denied.

The protection of the interests of consumers in the sphere of the administration of common-use objects of blocks of flats

The Constitutional Court's ruling (no KT25-N12/2016) of 5 October 2016

... the Constitution, *inter alia*, the provision of Paragraph 5 of Article 46 of the Constitution, whereby the state defends the interests of consumers, gives rise to the duty of the legislature to adopt such a legal regulation governing the relationships related to the administration of common-use objects of blocks of flats where this regulation would consolidate the provisions prohibiting the suppliers of heat, electricity, gas, or drinking water, as well as persons providing the services of waste transportation and regular maintenance of lifts, from acting as the administrators of common-use objects of blocks of flats; having established that the interests of certain persons associated with the aforesaid persons are contrary to the interest of the owners of flats and other premises that the purchase of services in connection with the maintenance of the block of flats would be made on terms advantageous to these owners, as well as that the implementation of such contracts would be properly controlled, the Constitution, *inter alia*, Paragraph 5 of Article 46 thereof, gives rise to the duty of the legislature also to impose the aforementioned prohibition on such persons; if it transpires that the provisions that are consolidated in laws and prohibit certain persons, *inter alia*, operators of a certain type or those carrying out economic activity in a certain territory, from acting as the administrators of common-use objects of blocks of flats do not (would not) ensure the rendering, at competitive prices, of appropriate quality services related to common-use objects, the Constitution, *inter alia*, Paragraph 3 of Article 46 thereof, gives rise to the duty of the legislature to establish such a legal regulation that would provide for the respective exceptions to the prohibition, applied to persons providing services to blocks of flats, on acting as the administrators of common-use objects of blocks of flats.

[...]

... in view of the fact that it is in the equal interest of all owners of flats or other premises in blocks of flats to receive quality services that meet their interests and that are necessary for the maintenance of blocks of flats, on the basis of the provision of the official constitutional doctrine according to which legal acts may not demand impossible things (*lex non cogit ad impossibilia*), it should be held that the Constitution, *inter alia*, Paragraph 3 of Article 46 thereof, and the constitutional principle of a state under the rule of law give rise to the duty of the legislature, after assessing the circle of operators carrying out or having the possibility of carrying out the activity related to the administration of common-use objects in blocks of flats and other important circumstances, to determine the size of residential areas in which the imposed limitations on certain persons for providing the services of the administration of common-use objects in blocks of flats would ensure the protection of the rights of the aforementioned consumers and, conversely, the size of residential areas in which, in the absence of any operator (operators) capable of providing the aforementioned services, the interest of the owners, as well as the public interest, to ensure the proper use and maintenance of blocks of flats would be denied.

Licensing economic activity (*inter alia*, the organisation of waste management)

The Constitutional Court's ruling of 30 May 2017

As a rule, the regulation of economic activity is connected with the establishment of conditions for economic activity, the regulation of certain procedures, control over economic activity, as well as with certain limitations and prohibitions set with regard to this activity; when a person takes part in an economic activity, he/she may be subject to special limitations established under laws (*inter alia*, the rulings of 13 May 2005, 21 June 2011, and 9 May 2014).

In regulating economic activity in such a way that it serves the general welfare of the people, the state may establish a differentiated legal regulation, which is determined by the specific nature of economic activity; the state, taking account of the specific nature of economic activity, may use different measures laid down in a legal regulation (*inter alia*, the rulings of 2 March 2009, 24 May 2013, and 3 April 2015).

One of the measures of the legal regulation of economic activity is the establishment of a state authorisation system (licensing) in order to ensure greater state control necessary in certain specific areas of economic activity. The Constitutional Court has noted that, when regulating licensed economic activity, the legislature must establish not only the necessary requirements that must be complied with by the economic operators seeking to receive the licences to engage in licensed activities, but also the requirements that must be complied with by persons who have received such licences, as well as the grounds and procedure for revoking the validity of the issued licences; compliance with the conditions of licences and oversight over this compliance is a necessary precondition for fair competition in the respective market (ruling of 21 January 2008); the freedom of economic activity of an economic operator that has violated the rules of fair competition laid down in the licence not only may, but normally must, be limited (rulings of 21 January 2008 and 15 March 2008).

[...]

... in regulating the economic activity of waste management, *inter alia*, the organisation of waste management, the ensuring of which should, under the Constitution, be regarded as a public interest, the state must reconcile different constitutional values, *inter alia*, those protected under Articles 46, 53 and 54 of the Constitution: freedom of individual economic activity and economic initiative, freedom of fair competition, and the protection of human health and the environment against harmful influences; the state must also ensure the constitutional imperative to regulate economic activity so that it serves the general welfare of the people. In view of the above, the legislature must establish such conditions for the activity of the organisation of waste management and effective control measures (*inter alia*, licensing of this economic activity) that would prevent damage to the environment and human health caused by the improperly managed waste.

Thus, when regulating the licensed economic activity in the sphere of the organisation of waste management, under the Constitution, the legislature must establish not only the necessary requirements that must be complied with by the economic operators seeking to receive the licences to engage in licensed

activities, but also the requirements that must be complied with by persons who have received such licences, as well as the grounds and procedure for revoking the validity of the issued licences. The freedom of economic activity of an economic operator that has violated the rules of the licensed economic activity not only may, but normally must, be limited in accordance with the principle of proportionality, stemming from the constitutional principle of a state under the rule of law; under the principle of proportionality ... freedom of economic activity may not be limited more than necessary in order to achieve the constitutionally significant objectives of the protection of human health and the environment; such limitations may not in themselves deny freedom of economic activity, which is guaranteed under Paragraph 1 of Article 46 of the Constitution, and state support for economic efforts and initiative useful to society, which is guaranteed under Paragraph 2 of the same article. One of such measures limiting the economic activity of the organisation of waste management may be revoking the validity of licences for those economic operators that grossly and/or repeatedly (systematically) violate the conditions, prescribed by means of laws, for the activity of waste management, *inter alia*, the organisation of waste management.

Legal persons as specific entities of legal relationships

See 2.2. Civil (individual) rights and freedoms, 2.2.10. Freedom of association, the ruling of 4 May 2018.

The regulation of the maintenance of forestry as economic activity (Article 46 of the Constitution)

The Constitutional Court's ruling of 16 April 2019

... the foundations for the regulation of the maintenance of forestry, as of any other economic activity, are consolidated in Article 46 of the Constitution. Interpreting the provisions of this article, among other things, the Constitutional Court has held the following:

- under the Constitution, the essential conditions for economic activity, as well as prohibitions and limitations that have an essential impact on the said activity, may be established only by means of a law (rulings of 31 May 2006 and 15 March 2008);
- the duty of the state, consolidated in Paragraph 3 of Article 46 of the Constitution, to regulate economic activity so that it serves the general welfare of the people implies the requirement for the legislature, when regulating this activity, to reconcile different constitutional values, *inter alia*, those protected under Articles 46 and 54 of the Constitution (rulings of 5 March 2015, 16 December 2015, and 24 May 2018).

[...]

... the Constitution, *inter alia*, Articles 46 and 54 and Paragraph 2 of Article 128 thereof, and the constitutional principle of a state under the rule of law give rise to the duty of the legislature to establish, by means of a law, the essential conditions for forestry management; the legislature must establish a clear and reasoned model of forestry management, *inter alia*, the respective subjects responsible for the management of forests belonging to the state by right of ownership, or the criteria for determining such subjects. It should also be noted that, while establishing the legal regulation governing forestry management, the legislature must observe, *inter alia*, the duty of the state, which stems from Paragraph 3 of Article 46 of the Constitution, to regulate economic activity so that it serves the general welfare of the people and, at the same time, the legislature must implement the requirements, which stem from Article 54 and Paragraph 2 of Article 128 of the Constitution, *inter alia*, to ensure the proper protection of forests, as well as the rational management and use of forests as state-owned property.

The prohibition of unfair actions in economic activity (*inter alia*, in the milk sector)

The Constitutional Court's ruling of 6 February 2020

Interpreting Paragraph 1 of Article 46 of the Constitution, under which the economy of Lithuania is based on the right of private ownership, freedom of individual economic activity, and economic initiative, the Constitutional Court has held that the notion of freedom of individual economic activity and economic

initiative is broad; it is based on personal freedom and the right to possess property; this notion includes the right to freely choose a business, the right to freely conclude contracts, freedom of fair competition, the equality of the rights of economic operators, etc. (*inter alia*, the rulings of 27 March 2009, 6 January 2011, and 9 May 2014); freedom of individual economic activity and economic initiative constitute the whole complex of legal possibilities, which creates the preconditions for a person to independently adopt decisions necessary for the respective economic activity and implies, *inter alia*, the freedom to conclude contracts (*inter alia*, the rulings of 2 March 2009, 8 October 2009, and 3 February 2010); the freedom to conclude contracts is, first of all, a free expression of the will of the parties to the contract in seeking to conclude the contract; this is the right independently, together with the contractor, to decide on the questions of the content of the contract without violating the respective imperative requirements of the law and without restricting the rights and freedoms of other persons (ruling of 20 November 1996); freedom of individual economic activity and economic initiative are inseparable from the possibility for a person, willing to engage in economic activity or, on the contrary, to withdraw from it, to enter the market or to leave the market without artificial barriers (*inter alia*, the rulings of 31 May 2006, 29 April 2009, and 5 March 2015).

[...]

Interpreting Paragraph 3 of Article 46 of the Constitution, under which the state regulates economic activity so that it serves the general welfare of the people, the Constitutional Court has held that this provision consolidates the constitutional principle that outlines the objectives, directions, means, and limits of the regulation of economic activity (*inter alia*, the rulings of 6 October 1999, 9 May 2014, and 21 December 2018).

As a rule, the regulation of economic activity is connected with the establishment of conditions for economic activity, the regulation of certain procedures, control over economic activity, as well as with certain limitations and prohibitions set with regard to this activity; when a person takes part in an economic activity, he/she may be subject to special limitations established by means of laws (*inter alia*, the rulings of 13 May 2005, 9 May 2014, and 21 December 2018).

Regulating economic activity in such a way that it serves the general welfare of the people, the state may establish a differentiated legal regulation, which is determined by the specific nature of economic activity; the state, taking account of the specific nature of economic activity, may use different measures laid down in a legal regulation (*inter alia*, the rulings of 2 March 2009, 3 April 2015, and 21 December 2018). The differentiated establishment of the legal situation of separate economic operators and the consolidation of the respective conditions of economic activity, by taking account of the importance and nature of the regulated economic relationships, should be related to the objectives raised by the state in the economic sphere and the aim to arrange the national economy accordingly (*inter alia*, the rulings of 18 October 2000, 31 May 2006, and 5 July 2013). Due to the specific nature, variety, and dynamism of economic activity, the regulation of economic activity cannot be the same all the time; the proportion of prohibitions and permissions is subject to change, *inter alia*, in order to ensure the public interest (*inter alia*, the rulings of 13 May 2005, 31 May 2006, and 16 December 2015).

[...]

... under the Constitution, *inter alia*, Paragraphs 1 and 3 of Article 46 thereof, and the constitutional principles of a state under the rule of law and justice and the general legal principle of *bona fides*, while taking into account the specific nature of a certain economic activity, *inter alia*, the production and processing of milk and trade in milk, and having assessed the situation and significance of a certain economic sphere for Lithuanian economy, as well as seeking to ensure a balance between the interests of economic operators and to prevent these economic operators from unfair economic activity and from abusing their dominant position in the market, the legislature may establish such a legal regulation of economic activity in the respective sphere, *inter alia*, in the milk sector, that would establish the special limitations applied to economic operators operating in that economic sphere, *inter alia*, the imperative provisions prohibiting the specific unfair actions as defined under these provisions in the field of contractual relationships of the said economic operators; by this legal regulation, the legislature may also provide for

control over compliance with these provisions and responsibility for violations thereof. In doing so, the legislature must respect the Constitution, *inter alia*, the constitutional principle of proportionality, and must not deny the essential provisions of freedom of economic activity, which are consolidated in Article 46 of the Constitution, such as the freedom to conclude contracts, the equality of the rights of economic operators, fair competition, etc.

The regulation of economic activity in the area of waste management; the legislature must establish, by means of a law, the essential conditions for the economic activity of waste management

The Constitutional Court's ruling of 18 February 2020

... under the Constitution, *inter alia*, the principle that the state takes care of the health of people, and the imperatives of the protection of the natural environment and environmental protection against harmful influences, ensuring waste management should be regarded as a public interest (ruling of 5 March 2015); when regulating the organisation of waste management as one of the types of economic activity, the legislature must take account of the fact that improperly managed waste endangers the environment, as well as human and public health (rulings of 9 May 2014 and 30 May 2017); it is possible to establish the duty of economic operators, where it is technically possible, first of all, to recycle waste in such a way that would allow producing products from it that are intended for the same or other purposes or, if there is no possibility of recycling this waste, to use it otherwise without making any significant negative impact on human and public health, as well as on the environment (ruling of 9 May 2014); in regulating the economic activity of waste management, ensuring which should, under the Constitution, be regarded as a public interest, the state must reconcile different constitutional values, *inter alia*, those protected under Articles 46, 53, and 54 of the Constitution, i.e. freedom of individual economic activity and economic initiative, freedom of fair competition, and the protection of human health and the environment against harmful influences, and it must ensure the constitutional imperative to regulate economic activity so that it serves the general welfare of the people (ruling of 30 May 2017).

... the imperatives of the protection of the natural environment, environmental protection against harmful influences, and the protection of public health, which are consolidated in the Constitution, *inter alia*, Articles 53 and 54 thereof, and the duty of the state to regulate economic activity so that it serves the general welfare of the people, which is consolidated in Paragraph 3 of Article 46 of the Constitution, give rise to the requirement for the legislature to regulate waste management as one of the types of economic activity in such a way as to ensure the use of waste for economic, social, and environmental purposes, where possible not by disposing but, first of all, by recycling or using it in another way, *inter alia*, for energy recovery.

[...]

... in order to ensure the public interest under Articles 53 and 54 of the Constitution that waste would be managed properly and would not endanger the environment and public health, the Constitution, *inter alia*, Paragraphs 1 and 3 of Article 46 thereof, and the constitutional principle of a state under the rule of law give rise to the duty of the legislature to establish, by means of a law, the essential conditions for the economic activity of waste management, *inter alia*, the clear criteria for determining the operators that may carry out the respective activity of waste management.

In regulating the organisation of waste management as one of the types of economic activity, *inter alia*, in establishing the requirements and conditions for the economic activity of waste management so that this legal regulation would comply with the requirement to serve the general welfare of the people, which is established in Paragraph 3 of Article 46 of the Constitution, the legislature must pay regard to the requirement, stemming from the constitutional principle of a state under the rule of law, not to establish such a legal regulation under which, for economic operators willing to engage in the economic activity of waste management, the possibilities (implied by freedom of individual economic activity and economic initiative, which are consolidated in Paragraph 1 of Article 46 of the Constitution) of managing waste in the manner that is most favourable to the environment and public health would be disproportionately complicated, or it would altogether be impossible to engage in this economic activity.

2.4.1.2. The right to work

The foundations of the protection of human labour rights

The Constitutional Court's ruling of 24 September 1998

Chapter IV “The National Economy and Labour” of the Constitution consolidates not only freedom of individual economic activity and the national economy based on private ownership, but also the regulation of economic activity so that it serves the general welfare of the nation. In the norms of this chapter, the economic and social spheres are not opposed, but supplement one another. Therefore, it is no coincidence that the foundations of the protection of human labour rights are enshrined in the Constitution. For instance, Article 48 of the Constitution prescribes that everyone may freely choose an occupation or business, and shall have the right to have proper, safe, and healthy conditions at work, as well as to receive fair pay for work and social security in the event of unemployment. Article 49 of the Constitution guarantees every person the right to rest and leisure, as well as to annual paid leave. It is provided for therein that the length of working time is established by law. Other norms of the Constitution provide for the ways of the protection of economic and social interests of employees, guarantee social assistance, etc.

It is possible to assert that human labour rights, as established in the Constitution, constitute an integral group that is part of the constitutional status of an individual. The Constitution views a working individual from a humanistic standpoint. An individual is understood not as an abstract social, economic, or professional category or as a participant in production relationships, but as a free personality, whose human dignity must be protected.

The legal regulation governing employment relationships

The Constitutional Court's ruling of 24 September 1998

The parties of employment relationships are an employee and an employer. These are subjects who are different with respect to their rights and duties. The duty of the state is to ensure cooperation between the subjects of employment relationships on the grounds of social partnership and to protect the rights of an employee as he/she is, as a rule, from the economic and social standpoint, the weaker party. The system of values that is established in the Constitution determines the fact that the legal norms regulating employment relationships and the areas linked with them must not only provide for the protection of an employee in the process of work, but also ensure a whole spectrum of the guarantees of the rights of a working individual in order to avoid the groundless domination of one party of employment relationships and the dependency of the other party. It should be noted that these aims determine the legal regulation of employment relationships.

The following principles are characteristic of the legal regulation of employment relationships: the equality of the parties of an employment contract; the establishment of supplementary guarantees in respect to most vulnerable groups of citizens; the prohibition against any unilateral change of the conditions agreed upon by the parties; the right of an employee to cancel the employment contract under the procedure established by means of laws; the possibility for an employer to cancel the employment contract only on the grounds established by means of laws; the equality of the rights of employees irrespective of their gender, race, nationality, citizenship, political views, attitude towards religion, or other circumstances not related to the performance characteristics of employees.

In order to ensure a balance between an employer and an employee, certain guarantees are established in employment relationships for employees; such guarantees may not be reduced by an agreement of the parties. These guarantees are as follows: minimum remuneration for work, compensation for idle time in cases provided for by means of a law, retirement benefits, a strict regulation of cancelling an employment contract on the initiative of an employer, etc. The implementation of these measures provided for by means of a law is linked with certain expenses incurred by an employer. However, these measures are necessary in order to protect the social needs of an employee.

Both the sufficient protection of the property interests of an employer and the protection of the employment rights of an employee are necessary preconditions for normal economic activity in modern society. The legislature must reconcile different interests and ensure the balance of constitutional values.

2.4.1.2.1. The right to freely choose an occupation or business

The right to freely choose an occupation or business includes the right to enter state service (Paragraph 1 of Article 33 and Paragraph 1 of Article 48 of the Constitution)

The Constitutional Court's ruling of 13 December 2004

State service is professional activity, i.e. work activity, carried out by the employees of state or municipal institutions. Thus, the right to enter on equal terms the state service of the Republic of Lithuania, as consolidated in Paragraph 1 of Article 33 of the Constitution, is related to the right of everyone to freely choose an occupation or business, which is established in Paragraph 1 of Article 48 of the Constitution. In this respect, the relations between the provision “Citizens shall have the right ... to enter on equal terms the State Service of the Republic of Lithuania” of Paragraph 1 of Article 33 of the Constitution and the provision “Everyone may freely choose a job or business” of Paragraph 1 of Article 48 thereof may be regarded as relations between *lex specialis* and *lex generalis*.

It should be noted that the right of each person to freely choose an occupation in Paragraph 1 of Article 48 of the Constitution is formulated broader, i.e. as the right of each person to “freely choose a job or business”. The Constitutional Court has held that the provision of Paragraph 1 of Article 48 of the Constitution, whereby everyone may freely choose an occupation or business, is a norm of general nature based on the universally recognised concept of human freedom (ruling of 4 March 1999), which means the possibility of choosing the type of occupation at one’s own discretion, i.e. by deciding freely on this matter (ruling of 10 July 1996) and that the freedom to freely choose an occupation or business, which is consolidated in Paragraph 1 of Article 48 of the Constitution, is one of the necessary conditions for satisfying human vital needs and ensuring the appropriate place of an individual in society (rulings of 4 March 1999 and 4 July 2003).

Thus, under the Constitution, a person who seeks to implement his/her constitutional right to work has the right to decide freely whether to choose an occupation in the private sector or a private business, or to seek to be employed in state service. The provision “Everyone may freely choose a job or business” of Paragraph 1 of Article 48 of the Constitution implies the duty of the state and the legislature to create the legal conditions for the implementation of this right (rulings of 4 March 1999 and 4 July 2003).

The right to freely choose an occupation or business; the right to freely choose and acquire a profession (Paragraph 1 of Article 48 of the Constitution)

The Constitutional Court's ruling of 20 February 2008

Under Paragraph 1 of Article 48 of the Constitution, everyone may freely choose an occupation or business. The constitutional freedom of each individual to choose an occupation or business is a necessary condition for satisfying the vital needs of an individual, securing his/her appropriate position in society and implies the duty of the legislature to create the legal preconditions for implementing this freedom; the legislature, while creating such preconditions, has the powers to establish, when taking account of the nature of an occupation or business and having regard to the Constitution, the conditions for the implementation of the right to freely choose an occupation or business (rulings of 25 November 2002, 4 July 2003, 29 December 2004, 13 August 2007, and 7 January 2008). The human right to freely choose one or another type of occupation or business is first linked with various natural requirements, i.e. the abilities and potential of every person; such requirements may include: holding certain education, moral and other qualities (e.g. with regard to physicians, teachers, judges, public prosecutors, etc.), the acquisition of a special right (e.g. with regard to drivers), etc. (ruling of 15 March 1996). The requirements related to certain qualifications, professional knowledge, and skills for persons who aspire to do complex or responsible work are indisputable and, as a rule, universally recognised (ruling of 10 July 1996).

The constitutional freedom of each individual to choose an occupation or business also implies the right to freely choose and acquire a profession. This right is related with the right to education, which is often a necessary condition for the acquisition of the respective professional qualification. Higher education, which is awarded upon completing studies in higher education, is necessary for certain professions.

[...]

When the constitutional rights of a person to work, education, and profession are interpreted in the context of the constitutional principles of legal certainty, legal security, and transparency, it should be held that the state has the duty to ensure that the requirements defining the education necessary for doing a certain job or holding a certain position would be public and clear; the main requirements must not be changed in an arbitrary and voluntaristic manner; otherwise, people would be unable to properly plan the choice of their profession and education.

The possibility of freely choosing an occupation or business must not be restricted on the grounds that a pension has been granted and paid to a person (Paragraph 1 of Article 48 of the Constitution)

The Constitutional Court's ruling of 6 February 2012

In the jurisprudence of the Constitutional Court, it has ... been held more than once that, when regulating pensionary relationships, it is necessary to have regard to Paragraph 1 of Article 48 of the Constitution, which, *inter alia*, enshrines the possibility of an individual to choose an occupation or business at his/her own discretion (i.e. by his/her own free decision); the constitutional freedom of each individual to choose an occupation or business implies the duty of the legislature to create the legal preconditions for implementing this freedom; the official constitutional doctrine of human rights is also based on the principled provision that, under the Constitution, it is not allowed to establish any such a legal regulation by which a person, in implementing a certain constitutional right, would lose the possibility of implementing another constitutional right; thus, under the Constitution, it is not permitted to establish such a legal regulation that would impose such a restriction on a person who has been granted and paid an old-age pension that is designed to limit the possibility of freely choosing an occupation or business specifically because of the fact that such a person has been granted and paid an old-age pension, although he/she meets the conditions, provided for by means of a law, that make it possible for him/her to have a certain occupation or conduct a certain business; such a legal regulation under which a person may not freely choose an occupation or business due to the fact that, upon the implementation of this right, he/she would not be paid the granted old-age pension or part thereof that was paid until then must also be considered a restriction on the possibility of freely choosing an occupation or business; this provision must *mutatis mutandis* be applied to other types of pensions, *inter alia*, state pensions provided for by means of a law (ruling of 22 October 2007 and the decision of 20 April 2010).

2.4.1.2.2. Professional competence requirements

The powers of the legislature to establish the conditions for implementing the right to freely choose an occupation or business, as well as to establish professional competence requirements

The Constitutional Court's ruling of 13 December 2004

The Constitutional Court has held that, when creating the legal preconditions for implementing the right to freely choose an occupation or business, the legislature is empowered to establish, by taking account of the nature of an occupation, the conditions for implementing the right to freely choose an occupation; in doing so, the legislature must observe the Constitution (ruling of 4 July 2003). In its ruling of 4 March 1999, the Constitutional Court held the following: "Implementing its obligation to ensure national security and proper guidance of young people, to ensure education, credible financial system, the protection of state secrets, etc., the state is entitled to establish additional, special requirements for those who wish to work in the main areas of economy and business." It was held in the Constitutional Court's

ruling of 10 July 1996 that, “however, certain qualifications, professional knowledge, and skills are necessary for complex work; therefore, the respective requirements for persons who aspire to do complex or responsible work are indisputable and, as a rule, universally recognised”, as well as that “the requirements of professional competence do not contradict the human right to freely choose an occupation or business”.

Establishing the standards of the quality of higher education that must be met by persons aspiring to hold certain positions or be engaged in a certain professional activity (for more on control over higher education quality, see 2.4.3. Cultural rights, 2.4.3.1. The right to education, 2.4.3.1.2. The right to seek higher education)

The Constitutional Court’s ruling of 20 February 2008

... The standards of the quality of higher education that must be met by a person aspiring to hold a certain position or to be engaged in a certain professional activity must be established by means of a law; ensuring such standards and control over compliance with these standards may also be established by means of statutory legal acts, as well as by means of legal acts of schools of higher education; requirements for certain fields of studies may also be established by means of statutory acts, the legal regulation established wherein must not compete with that established in laws. The importance of such standards is especially evident in certain professions, *inter alia*, the professions controlled by the state, where especially complex and responsible work is linked with the acquisition of such professions; the importance of such standards is also especially evident in such positions in institutions of public power where certain functions related to the implementation of public power (first of all, state power) are entrusted only to such representatives of a certain profession who have especially high qualification ... it is especially evident that the said standards are necessary for the legal profession (and not only for it).

The legal profession; requirements for the professional qualification of lawyers (on higher education in law, also see 2.4.3. Cultural rights, 2.4.3.1. The right to education, 2.4.3.1.2. The right to seek higher education)

The Constitutional Court’s ruling of 20 February 2008

The legal profession is an inseparable part of the legal system. In a democratic state under the rule of law, high requirements are raised for this profession, because it is possible to ensure such fundamental legal values as the rule of law, justice, the rights and freedoms of persons, legal security and legal certainty, the right to a fair trial, legal assistance, etc. only in such a legal system where lawyers have the necessary professional competence; only lawyers who have the necessary professional competence may be entrusted with the functions of ensuring that the rights and freedoms of persons are protected and defended by legal means, as well as with the functions in deciding cases (settling legal disputes) in courts. This is particularly true for positions in institutions of public power where professional lawyers are entrusted with performing certain functions linked with the implementation of public power (first of all, state power) as, for instance, the function of the administration of justice, as well as for professions controlled by the state (i.e. such professions in which persons perform the functions of ensuring the public interest), engaging in which is entrusted only to persons who have the qualification of a lawyer, thus, also the education of a lawyer. The professional activity of lawyers, *inter alia*, judges, who are properly prepared and of high professional qualification determines the trust of the public in the state and its legal system. It needs to be noted that the processes of globalisation and European integration (which also do not bypass Lithuania) determine the fact that lawyers must have good knowledge not only of the legal system of their own country, but also of the legal systems of other countries, as well as of supranational law.

The legal profession is inseparable from higher education in law: higher education in law is a *conditio sine qua non* of professional and effective legal practice (both private and one practised in institutions of public power). The legal profession is also inseparable from the activity of universities: one of the most characteristic features of the western legal tradition, which was formed many centuries ago and to which Lithuania also belongs, is the fact that lawyers of the highest qualification are prepared precisely

in universities. In the western legal tradition, the acquisition of the highest professional qualification of a lawyer is related specifically with university higher education in law. In general, this does not mean that it would be impermissible to prepare lawyers also outside universities or that it would be impermissible (also in schools of higher education) to prepare lawyers of lower qualification (or legal specialists of narrower legal profile, who seek to acquire knowledge only in a certain area of law) whose legal education is not regarded as one corresponding to legal education awarded by universities and who can virtually do legal work of applied nature, which is less creative (and, thus, more simple); however, the principled position is taken that non-university education in law (as well as that acquired in schools of higher education) does not in itself imply the possibility for persons who have acquired it to seek to hold any type of position in the legal profession (*inter alia*, positions in institutions of public power) or to engage in any type of professional activity of a lawyer (*inter alia*, a profession controlled by the state). Therefore, in the countries of the western legal tradition, the requirement of precisely university higher education in law, but not simply higher education in law, for certain professional activity as a lawyer, including situations where a person could become a judge, is, in general, not impossible.

[...]

The jurisprudence of the Constitutional Court has revealed not only the meaning of higher education in law, but also the meaning of university higher education in law for legal practice. ... It was held in [the Constitutional Court's ruling of 10 July 1996] that the requirement of university higher education in law for advocates should be treated as the qualification requirement for persons who wish to work at the bar and as an increased requirement for educational qualifications for lawyers of this profession where the said requirement for educational qualifications is aimed to secure the rendering of more qualified legal assistance and to strengthen the guarantees of the protection and defence of human rights and freedoms The legal position of the Constitutional Court (*ratio decidendi*) was reasoned, *inter alia*, by the fact that not only the abundance of knowledge, but also broadness and fundamentality, are characteristic of university education, since persons who have university education acquire supplementary and universal knowledge that is necessary when adopting crucial decisions in various spheres of life, while other higher educational establishments perform a narrower function – they grant higher education that is the foundation of professional activity in a particular area; the same legal position was also reasoned by the fact that the purpose of university legal education is to prepare specialists with multidisciplinary profiles, who are able to assess the entire legal system and decide difficult problems. A much wider and varied syllabus of university studies, fundamental studies that take place for a longer time period, greater attention to general subjects of humanities, private law, etc. help to achieve the said purpose of university legal education. Therefore, the education in law acquired in the said other schools of higher education may not be unconditionally regarded as corresponding to university education, even though the former is deemed to be higher education.

Requirements for the professional qualification (education) of judges (applicants for the positions of judges)

See 9.1. Courts, 9.1.4. The constitutional status of judges. The appointment of judges, their professional career, and their release from duties. The judicial self-governance institutions, ruling of 20 February 2008.

2.4.1.2.3. The right to have proper, safe, and healthy conditions at work

The right to have proper, safe, and healthy conditions at work (Paragraph 1 of Article 48 of the Constitution)

The Constitutional Court's ruling of 29 April 2008

Paragraph 1 of Article 48 of the Constitution prescribes: "Everyone may freely choose a job or business, and shall have the right to have proper, safe, and healthy conditions at work, as well as to receive fair pay for work and social security in the event of unemployment."

The constitutional right to have proper, safe and healthy working conditions means, *inter alia*, that every employee has the right to such conditions at work (work environment, work nature, the time of work and rest, tools of work, etc. must be regarded as working conditions) that would not exert negative influence on his/her life, health, and would be in line with the requirements of safety and hygiene (ruling of 9 April 2002). At the same time, this constitutional right implies the duty of an employer to ensure proper, safe, and healthy conditions at work. The human right to have proper, safe and healthy conditions at work, which stems from the Constitution, *inter alia*, Paragraph 1 of Article 48 thereof, also does not deny the duty of every employee to follow the requirements of safety at work.

It needs to be noted that the provision of Paragraph 1 of Article 48 of the Constitution, under which everyone has the right to have proper, safe, and healthy conditions at work, also implies the duty of the state to establish a legal regulation under which the legal preconditions for implementing this right would be created. In doing so, the state must also establish the effective mechanisms of control over the implementation of this right.

The right to have proper, safe, and healthy conditions at work (Paragraph 1 of Article 48 of the Constitution)

The Constitutional Court's ruling of 9 May 2013

The provision "Everyone ... shall have the right to have proper, safe, and healthy conditions at work" of Paragraph 1 of Article 48 of the Constitution, Article 49 thereof, and the provision "The State shall take care of the health of people" of Paragraph 1 of Article 53 thereof give rise to the duty of the state to establish a legal regulation that would create the legal preconditions for ensuring the right of an individual to have proper, safe, and healthy conditions at work, the right to rest and leisure, as well as to annual paid leave. ... the said provisions of the Constitution imply the duty of the legislature to regulate, by means of a law, the essential conditions for the implementation of these rights, *inter alia*, to define working and rest time by taking into consideration the nature and conditions of work, the maximum duration of the working time of the employees whose working hours are fixed, and to regulate the duration of annual paid leave.

The provision "Everyone ... shall have the right to have proper, safe, and healthy conditions at work" of Paragraph 1 of Article 48 of the Constitution, if interpreted in the context of Paragraph 2 of Article 49 and Paragraph 1 of Article 53 thereof, implies the discretion of the legislature to establish or to assign the Government or another law-making subject to establish for employees the guarantees of work and rest, *inter alia*, the duration of working and rest time; taking account of the particularities of the working environment where the said particularities may be varied and depend on the nature of activity, a differentiated duration of working and rest time of employees must be established. ... the legal regulation on working and rest time may be amended in view of changes in the working environment and conditions.

2.4.1.2.4. The right to receive fair pay for work

The powers of the legislature to amend the legal regulation of remuneration upon the emergence of a particularly difficult economic and financial situation in the state

The Constitutional Court's decision of 20 April 2010

The right to receive fair pay for work is a constitutional human right (Paragraph 1 of Article 48 of the Constitution). This constitutional right is a precondition for implementing numerous other constitutional rights, *inter alia*, this right is one of the most important preconditions for implementing the right of ownership, which is consolidated in Article 23 Constitution (rulings of 13 December 2004, 20 March 2007, and 11 December 2009).

It needs to be noted that the right to receive fair pay for work, which is enshrined, *inter alia*, in Paragraph 1 of Article 48 of the Constitution, is inseparable from the constitutional principle of a state under the rule of law, which also includes the principle of the protection of legitimate expectations. The constitutional principle of the protection of legitimate expectations means that, in cases where certain remuneration for work has been established for a person by legal acts, it must be paid for the established

time. ... it also should be noted that the constitutional principle of the protection of legitimate expectations does not mean that the remuneration for work paid to state servants from the funds of the state budget or a municipal budget may not be reduced at all; such reduction of remuneration of state servants is possible only in exceptional cases and only if it necessary in order to protect other values consolidated in the Constitution; however, even in such exceptional cases, remuneration for work must not be reduced in violation of the balance consolidated in the Constitution between the interests of a person and those of society; it is not allowed to reduce the remuneration for work of only separate categories of employees who are remunerated for their work from the funds of the state budget or a municipal budget; the reduction of remuneration for work must be in conformity with the constitutional principle of proportionality (rulings of 18 December 2001, 13 December 2004, 20 March 2007, and 11 December 2009).

A particularly difficult economic and financial situation in the state is one of exceptional cases where it is allowed to reduce the remuneration for work of officials of institutions that are financed from the funds of state and municipal budgets (and of other employees who are paid for their work from the funds of state and municipal budgets), as well as that of state servants.

The Constitutional Court has noted more than once that, when, due to a particularly difficult economic and financial situation in the state, the legislature adopts the decision to reduce the remuneration for work of officials and other state servants (employees) of institutions that are funded from state or municipal budgets, the legislature must ascertain that the economic and financial situation of the state is so difficult that it calls for a necessity to reduce the remuneration for work of the said officials and state servants (employees) (decision of 15 January 2009 and the ruling of 11 December 2009); such reduction of remuneration for work must be temporary and based on the circumstances of a particularly difficult economic and financial situation in the state as, for instance, where the collection of state budget revenue is disordered to the extent that, due to this, the state is unable to perform the obligations undertaken by it, and such a situation in the state is not short-term (decision of 15 January 2009 and the ruling of 11 December 2009). Under such circumstances, the legislature may change the legal regulation governing the remuneration of various persons and may consolidate such a legal regulation on remuneration that would be less favourable to these persons if this is necessary in order to ensure the vital interests of society and the state and to protect other constitutional values (rulings of 28 March 2006, 22 October 2007, and 11 December 2009 and the decision of 15 January 2009); however, also in such cases, the legislature must keep the balance between the rights and legitimate interests of persons for whom the less favourable legal regulation is established, on the one hand, and the interests of society and the state, on the other hand, i.e. the legislature must pay regard to the requirements of the principle of proportionality (rulings of 28 March 2006, 22 October 2007, and 11 December 2009 and the decision of 15 January 2009).

The aforesaid provision of the official constitutional doctrine – the reduction of remuneration for work must be temporary – implies that, in cases where the economic and financial situation of the state deteriorates considerably and the legislature decides to amend the legal regulation governing remuneration for various persons and to lay down a less favourable legal regulation with respect to those persons, i.e. adopts the decision to reduce the remuneration for work of officials of institutions financed from the funds of state and municipal budgets (and other employees who are paid for their work from the funds of state and municipal budgets), as well as that of state servants, the reduced remuneration may only be paid on a temporary basis, i.e. as long as there is a certain extreme situation in the state. When a particularly difficult economic and financial situation is over, the legislature must reintroduce the application of those amounts of the remuneration of officials of institutions financed from the funds of state and municipal budgets (and other employees who are paid for their work from the funds of state or municipal budgets), as well as those amounts of the remuneration of state servants, that were established in the state prior to the emergence of the said situation.

The provision that the reduction of remuneration for work must be temporary may not be interpreted as meaning that the state, after the legislature has reduced the remuneration for work of officials of institutions financed from the funds of state and municipal budgets (and other employees who are paid for their work from the funds of state and municipal budgets), as well as that of state servants, is released from

the duty to look for ways of securing the accumulation of the funds necessary to pay remuneration in the amounts that were prior to their reduction. Quite to the contrary, if, before the end of an economic crisis, the possibility arises to accumulate (receive) the funds necessary to pay remuneration in the amounts that were before the reduction of remuneration, the legislature must repeal the legal regulation under which the remuneration for work of officials of institutions financed from the funds of state and municipal budgets (and other employees who are paid for their work from the funds of state and municipal budgets), as well as that of state servants, was reduced.

[...]

... the constitutional concept of the state budget, *inter alia*, the constitutional institution of a budget year, implies that, in cases where there is an extreme situation in the state (economic crisis etc.) due to which the economic and financial situation in the state changes to the extent that, *inter alia*, it is impossible to ensure the accumulation of the funds necessary for the payment of the remuneration for work of officials and state servants of institutions funded from state and municipal budgets (remuneration for work of other employees who are remunerated for work from the funds of state and municipal budgets) ... and where, due to this, the respective legal regulation needs to be modified by reducing the remuneration ... of the said persons, it is allowed to reduce remuneration ... for no longer than one budget year. The constitutional institution of a budget year gives rise to the duty of the legislature, in the course of deliberating and approving the state budget for a subsequent year, to reassess the actual economic and financial situation in the state and to decide whether the said situation is still very difficult, *inter alia*, whether the collection of the revenue of the state budget is still disordered to the extent that, due to this, the state is unable to perform the obligations undertaken by it and, therefore, whether it is also necessary to establish, for the subsequent budget year, such a legal regulation whereby the reduced remuneration ... would have to be paid.

The right to receive fair pay for work (Paragraph 1 of Article 48 of the Constitution)

The Constitutional Court's ruling of 14 February 2011

In its rulings of 13 December 2004 and 11 December 2009, the Constitutional Court held that the right of every citizen to receive fair pay for work, which is consolidated in Paragraph 1 of Article 48 of the Constitution, is a precondition for implementing most other constitutional rights, *inter alia*, that this right is one of the most important preconditions for implementing the right of ownership, which is consolidated in Article 23 of the Constitution; under the Constitution, a person who has completed the assigned work has the right to demand that the whole work remuneration (remuneration) that is due under legal acts be paid to him/her and that it be paid in due time; thus, the work remuneration of state servants must also be paid within the time established by means of laws; this right of a person is guaranteed, protected, and defended as the right of ownership; under the Constitution, such a legal situation where a state servant who has fulfilled the assigned work is not paid, or is paid not in due time, or is paid in an amount that is lower than it is due under laws and other legal acts passed on the basis of laws is impermissible.

The Constitutional Court has also held more than once (*inter alia*, in the rulings of 18 December 2001, 13 December 2004, and 11 December 2009) that:

- the right to receive fair pay for work, which is guaranteed in the Constitution, is directly related to the principle of the equality of all persons before the law, the court, and other state institutions; it is prohibited to diminish remuneration for work on the basis of gender, race, nationality, citizenship, political views, attitude towards religion, or other circumstances not related to the performance characteristics of an employee if the functions of the work of the employee, the scope of his/her work, etc. have not been changed;

- the constitutional right to receive fair pay for work is also connected with one of the elements of the constitutional principle of a state under the rule of law, i.e. with the constitutional principle of the protection of legitimate expectations; in cases where certain pay for work is established for a state servant (or another employee) by legal acts, it must be paid for the established time; state servants (and other employees) have the right to reasonably expect that their rights acquired under valid legal acts will be retained for the established period of time and can be implemented in reality; the legal regulation may be changed only by

following the procedure established in advance and by not violating the principles and norms of the Constitution; it is necessary, *inter alia*, to follow the principle of *lex retro non agit*; no changes in the legal regulation are allowed to deny the legitimate interests and legitimate expectations of a person ...

The specific nature of the activities of state and municipal politicians that is important for the legal regulation governing their work remuneration (Paragraph 1 of Article 48 of the Constitution)

The Constitutional Court's ruling of 30 April 2013

The right to receive fair pay for work, which is guaranteed in Paragraph 1 of Article 48 of the Constitution ... must be ensured, *inter alia*, by regulating the activity of state politicians and municipal politicians. ...

... when establishing the legal regulation governing the activity of state politicians and municipal politicians, account must be taken, *inter alia*, of the specificity of this activity, which is determined by the function of politicians to represent the interests of the Nation, the state, or residents of a certain municipality (this function stems from the Constitution (*inter alia*, Articles 4 and 5, Paragraph 1 of Article 55, Articles 77, 97, 98, and 119 thereof)); account must also be taken of the powers of politicians to decide questions in relation to the formation and implementation (and control over implementation) of the policy in the spheres within the competence of the state, the competence of a certain sphere of its governance, or municipal competence, as well as the related requirements for accountability to the public, the publicity requirement, the duties of representation, and other duties. ...

... from the point of view of work organisation, the activity of state politicians and municipal politicians is specific and the legal regulation governing the said activity cannot be absolutely identical to the general regulation of employment relationships, *inter alia*, when establishing requirements for the structure of working time and the accounting of working time. Consideration must be given to the said specificity of the activity of politicians also when establishing, by means of a law, the amount of their work remuneration and the duration of their rest and paid annual leave ...

[...]

Thus, the specificity of the activity of state politicians or municipal politicians ... determine the differences in their legal situation *vis-à-vis* other working persons due to which they may be treated in a manner different compared with other working persons; therefore, such a legal regulation governing their pay for work may be established that would be different compared with other working persons.

The right to receive fair pay for work (Paragraph 1 of Article 48 of the Constitution)

The Constitutional Court's ruling of 1 July 2013

... the right to receive fair pay for work, which is consolidated in Paragraph 1 of Article 48 of the Constitution, is related to the constitutional principle of justice and means the right of a person to receive remuneration for work that would be fair in terms of, *inter alia*, the specificity of work, the complexity and amount of work functions, responsibility for carrying out those functions, the particularities of the positions held, and the professional level and qualification of a person. In this context, it needs to be emphasised that, under the Constitution, there is no tolerance for any such a legal regulation that would establish a unified or substantially the same amount of remuneration for persons who hold the positions that are different in terms of the complexity and amount of the performed functions and responsibility that falls upon them, who have different professional level and qualification, and who are remunerated from the funds of the state or municipal budget.

The powers of the legislature to amend the legal regulation of remuneration upon the emergence of a particularly difficult economic and financial situation in the state

The Constitutional Court's ruling of 1 July 2013

In providing the interpretation of the right to receive fair pay for work, which is consolidated in Paragraph 1 of Article 48 of the Constitution, and of the content of the principle of proportionality in the context of the reduction of the remuneration of state servants (and other employees who are paid for their

work from the funds of the state or municipal budget), in its ruling of 11 December 2009 and its decision of 20 April 2010, the Constitutional Court held that:

- the remuneration of state servants may be reduced on a temporary basis when a particularly difficult economic and financial situation occurs in the state; however, in such a case, regard must be paid to the requirements of the principle of proportionality; the constitutional principle of proportionality is inseparable from other norms and principles of the Constitution, *inter alia*, the constitutional principles of the equality of rights and justice;

- the constitutional principle of proportionality means, *inter alia*, that, when there is a particularly difficult economic and financial situation in the state and when, due to this, there is a necessity for a temporary reduction of the remuneration of state servants in order to secure vitally important interests of society and the state and to protect other constitutional values, the legislature is under the obligation to establish a uniform and non-discriminatory scale of the reduction of the remuneration of state servants, according to which, with respect to all categories of state servants (and other employees financed from the funds of the state or municipal budget), the remuneration would be reduced by not violating the proportions of the amounts of the remuneration established with regard to different categories of state servants prior to the emergence of the particularly difficult economic and financial situation in the state;

- the constitutional institution of state service implies a certain hierarchical system of state servants and differentiated amounts of remuneration paid to them; the differences in the amounts of the remuneration of state servants depend on a number of objective particularities of state service as, for instance, the nature of the functions assigned to a state institution, the complexity and extent of the functions assigned to a state servant, responsibility for the fulfilment of those functions, the particularities of the positions held, the professional level and qualification of a state servant, etc.;

- the Constitution does not tolerate any such situations where the remuneration of state servants, when there is a difficult economic and financial situation in the state, is reduced in a disproportionate manner, *inter alia*, where the amount of the remuneration of a state servant of high qualification, who performs complex work, is approximated to or even made equal with the remuneration of a state servant of lower qualification, who performs less complex work, or where the remuneration of state servants of certain groups is reduced by taking into consideration not the entire work remuneration received, but only individual constituent parts of the work remuneration of state servants, etc.; in such situations, not only the constitutional principles of proportionality, the equality of rights, and justice would be denied, but also the constitutional concept of state service, as well as the provision of Paragraph 1 of Article 48 of the Constitution, which consolidates the human right to receive fair pay for work, would be deviated from;

- the constitutional principles of a state under the rule of law, justice, and proportionality mean that it is allowed to establish a limit on the amount of the remuneration of a state servant below which the remuneration established for state servants (and other employees who are paid for their work from the funds of the state or municipal budget) would not be reduced even where there is a particularly difficult economic and financial situation in the state; in establishing this limit, account must be taken of the circumstance that, under the Constitution, it is not allowed to establish any such a legal regulation whereby the remuneration of a state servant becomes reduced to such an amount that would not secure the minimum socially acceptable needs and the living conditions compatible with human dignity.

... these provisions of the official constitutional doctrine reveal the requirements, stemming from the Constitution, for the legal regulation governing the reduction of the amount of the remuneration of state servants upon the emergence of a particularly difficult economic and financial situation in the state; such requirements are also *mutatis mutandis* applicable to the legal regulation governing the reduction of the remuneration of judges.

[...]

... the constitutional principle of social solidarity implies that the burden of fulfilling certain obligations to a certain extent must also be distributed among members of society; however, such distribution must be constitutionally justifiable; it must not be disproportionate; it must not deny the social orientation of the state and the obligations stemming from the Constitution for the state. ... upon the

emergence of a particularly difficult economic and financial situation in the state and when, due to this, the state is incapable of fulfilling, to the full extent, its obligations undertaken to members of society, *inter alia*, the obligations related to the payment of remuneration to state servants and judges, the constitutional principle of social solidarity implies a proportionate distribution of the incurred losses among members of society, *inter alia*, among state servants and judges.

In addition, it needs to be noted that the constitutional principle of social solidarity, when interpreted in the context of other constitutional principles (*inter alia*, those of proportionality and justice), does not imply any social egalitarianism, *inter alia*, it does not deny the requirement for the differentiation of the amounts of remuneration paid from the funds of the state or municipal budget, where consideration is given to the nature of the functions performed by the persons that receive it, the complexity and amount of the performed functions, the responsibility that falls upon them for performing those functions, the particularities of the position held, as well as the professional level and qualification of the persons holding those positions; it is also necessary to pay regard to this requirement in establishing the measures of reducing pay for work upon the emergence of a particularly difficult economic and financial situation.

It needs to be emphasised that the constitutional principle of social solidarity, if interpreted in the context of the constitutional principle of the equality of the rights of persons, implies the duty of the legislature to establish non-discriminatory extent of the reduction of the remuneration of persons who are paid for their work from the funds of the state or municipal budget. Such non-discriminatory extent of reduction means that remuneration is reduced in a proportionate manner for all categories of those persons regardless of where (in which state or municipal institutions) they work and which positions they hold.

The duty of the legislature to establish a mechanism for compensating for losses incurred by persons whose remuneration was reduced in a disproportionate manner

The Constitutional Court's ruling of 1 July 2013

... after the Constitutional Court declared the legal regulation that laid down the disproportionate extent of the reduction of the remuneration of persons who are paid for their work from the funds of the state budget or a municipal budget to be in conflict with the provision “Everyone ... shall have the right ... to receive fair pay for work” of Paragraph 1 of Article 48 of the Constitution, the legislature must, pursuant to the requirement stemming from Article 23 of the Constitution, establish a mechanism for compensating those persons for the losses incurred; this means, among other things, that a procedure must be established on the grounds of which the state, within a reasonable time, in a fair manner, and to the extent that the incurred losses were disproportionate, will compensate for such losses.

The powers of the legislature to postpone the establishment (implementation) of a mechanism for compensating for losses incurred as a result of the disproportionate reduction of remuneration

The Constitutional Court's decision of 16 April 2014

The implementation of the duty of the legislature to establish a mechanism for compensating persons for the incurred losses, as provided for in the provisions ... of the Constitutional Court's ruling of 1 July 2013, is related to an economic and financial situation in the state and the capabilities of the state to accumulate the funds necessary for such compensation. Thus, these provisions should be interpreted in the context of the provisions of Item 14 of Article 67 and Paragraph 1 of Article 131 of the Constitution, which consolidate the powers of the Seimas to approve a draft state budget. ...

[...]

... the legislature, while following the constitutional principle of responsible governance, may postpone the establishment and/or implementation of a mechanism for compensating for losses incurred as a result of the disproportionate reduction of remuneration for a reasonable time, which should be determined in view of an assessment of the existing economic and financial situation in the state and in the light of the consequences of a special situation and the capabilities of the state, including various obligations assumed by the state, which, *inter alia*, are related to financial discipline, thus, also to the imperative of

balancing the revenue and expenditure of the state budget. Society must be presented with concrete criteria upon which the assessment of the economic and financial situation of the state is based, determining the postponement of the establishment or implementation of a mechanism for compensating for the incurred losses. When a special situation in the state is over, the legislature must immediately establish a compensation mechanism by passing a legal act (law) so that the legitimate expectations of persons who incurred the said losses would be ensured.

The implementation of the right to compensation for losses incurred as a result of the disproportionate reduction of remuneration

The Constitutional Court's decision of 16 April 2014

... under the Constitution, *inter alia*, under the constitutional imperative of social harmony, fair compensation for the losses incurred as a result of the disproportionate reduction of remuneration by persons who are paid remuneration for work from the funds of the state budget or municipal budgets may be properly ensured only on the grounds of the amounts, time limits, and other essential elements of compensation for the incurred losses where the said amounts, time limits, and other essential elements of compensation are established by the legislature.

Consequently, the legislature has the duty to establish a compensation mechanism and must assess which of the incurred losses were disproportionate. The duty of the legislature to establish, within a reasonable time, a fair mechanism for compensating for losses creates the legitimate expectation for the persons who incurred such losses that their losses will be fairly compensated without unreasonable delay.

It should be noted that, as long as the legislature, without violating the requirement of the establishment of a mechanism for compensating for the incurred losses, has not fulfilled its duty, the following is not clear:

- the extent of fair compensation of these losses so that the requirement for compensating for the disproportionately reduced amount of remuneration would be met;

- from when, in what portions, and within what timeframe in reality (upon the assessment of the economic and financial situation in the state, in view of the consequences of a special situation and the capabilities of the state, including various obligations assumed by the state, which, *inter alia*, are related to financial discipline, thus, also to the imperative of balancing the revenue and expenditure of the state budget) it is possible to compensate for the aforesaid losses.

Therefore, the right of persons who incurred losses due to the disproportionate reduction of remuneration to compensation for such losses must be implemented through a mechanism, established by the legislature, which would ensure fair compensation within a reasonable time.

... everyone who believes that their rights or freedoms have been violated has the right to judicial defence of their constitutional rights and freedoms that have been violated; the constitutional right of persons to apply to a court may not be artificially restricted and the implementation of this right may not be unreasonably burdened; otherwise, it would have to be stated that this constitutional right is a mere declaration.

Therefore, in cases where the legislature unreasonably delays the establishment of a mechanism for compensating for the incurred losses or where an unfair mechanism is established (from the point of view of the time limits and amounts of the payment of compensation), the persons who incurred those losses may defend their violated rights under judicial procedure.

Balancing the interests of employees, employers, and society; statutory limitation on claims for the judicial award of work remuneration and other amounts connected with employment relationships

The Constitutional Court's ruling of 8 May 2014

... the provisions of Paragraph 1 of Article 48 of the Constitution should be interpreted in the light of Paragraph 3 of Article 46 of the Constitution, which provides: "The State shall regulate economic activity so that it serves the general welfare of the Nation." In its ruling of 4 March 1999, the Constitutional Court

held that, in the relationships of the labour market in the area of private business, the state is under the obligation to ensure, by means established under the law, a balance between the interests of employers and those of persons offering their labour force and skills and to reconcile such interests with those of society. It should be noted that this is also *mutatis mutandis* applicable to legal relationships in situations where the employer is the state itself.

In view of this fact, it should be noted that one of the legal guarantees for a balance between the interests of employees and those of employers and the reconciliation of such interests with those of society is the procedural institution of statutory limitation on claims, which, *inter alia*, establishes the period during which the parties of employment relationships are allowed to defend their rights by making a claim.

... the legislature has broad discretion to establish the period of statutory limitation on claims regarding the judicial award of work remuneration and other amounts connected with employment relationships. However, when implementing such discretion, the legislature must establish the period ensuring the effective protection of the constitutional right to receive fair pay for work and the stability of legal relationships safeguarding the interests of an employer against unreasonably delayed claims. This period could also be shorter than the general period of statutory limitation applicable to employment relationships.

Regulating the work remuneration relationships of persons remunerated from the funds of the state (municipal) budget (Paragraph 1 of Article 48 and Paragraph 1 of Article 128 of the Constitution)

The Constitutional Court's ruling of 29 September 2015

Revealing the content of the constitutional right of a person to receive fair pay for work, the Constitutional Court, among other things, has noted that the work remuneration of state servants, which is one of the main preconditions for implementing their other legitimate interests, must be established by means of a law and must be paid at the time that is established by means of a law (rulings of 18 December 2001 and 13 December 2004). The Constitutional Court has also held that the provisions of the official constitutional doctrine on the work pay of state servants are *mutatis mutandis* applicable to all persons who receive remuneration from the state (municipal) budget (ruling of 20 March 2007). In view of this fact, the following doctrinal provisions ... should be noted (formulated, *inter alia*, in the rulings of 13 December 2004, 20 March 2007, 11 December 2009, and 30 April 2013):

- the relationships of state service, to the extent that they are linked with human rights and freedoms, must be regulated by means of laws, while the procedural relationships of state service (as well as those related to it) may be regulated by means of substatutory acts; however, this must be done so that there would be no competition with the legal regulation established by means of laws; clear criteria on the basis of which the amount of pay for work (work remuneration) is established with regard to state servants constitute an essential element of the right to receive fair pay for work, and they must be established by means of a law;

- the legislature has broad discretion in choosing and consolidating, in laws, a certain system of payment for the work of state servants; such a system is possible where a salary of a fixed amount is established, or where the minimum or maximum salaries are established for a particular position, or where remuneration for work is regulated by applying a coefficient based on a certain established value; such remuneration for work may also be composed of several constituent parts;

- since the professional activity of state servants is remunerated from the state (municipal) budget, this budget must provide for the funds for the work remuneration of state servants.

The constitutional requirements to be complied with in regulating the relationships of work pay from the funds of the state (municipal) budget also stem from the provisions of the Constitution that consolidate the constitutional powers of the Seimas and the Government in the sphere of public finance.

[...]

In view of the fact that the funds of the state (municipal) budget allocated for the pay for work of the employees of establishments through which various functions of the state are implemented and which are financed from the said budget represent a significant part of the expenditure of the state (municipal) budget, it should be held that the financial liabilities of the state that determine the said expenditure and are linked with the work pay of these employees must be considered basic property liabilities of the state and, under Paragraph 1 of Article 128 of the Constitution, decisions concerning these liabilities must be adopted by the Seimas upon the proposal of the Government. Therefore, the most important elements (which have essential influence on the amount of the expenditure of the state (municipal) budget) of the work pay of the employees of establishments financed from the said funds must be established by means of a law.

... the Constitution, *inter alia*, the right of a person to receive fair pay for work, which is consolidated in Paragraph 1 of Article 48 thereof, as well as the provision (interpreted in the context of other constitutional powers of the Seimas and the Government in the sphere of public finance) of Paragraph 1 of Article 128, whereby decisions concerning basic property liabilities of the state must be adopted by the Seimas upon the proposal of the Government, gives rise to the duty of the legislature to establish, by means of a law, the essential conditions for the work pay of persons who receive remuneration from the funds of the state (municipal) budget, where such conditions determine their work remuneration (such as the system of payment, the components of work remuneration, the criteria on which work remuneration should depend, and their influence on work remuneration). While regulating the relationships of the work pay of these persons by means of its resolution, the Government may only detail and particularise the legal regulation established by means of a law, as well as establish the procedure for its implementation and regulate the procedural aspects of work pay.

The work pay of state servants

The Constitutional Court's ruling (no KT29-N15/2016) of 27 October 2016

Developing the official constitutional doctrine of the work pay of state servants, the Constitutional Court has held the following in its jurisprudence (*inter alia*, the rulings of 13 December 2004, 11 December 2009, and 29 September 2015):

- under the Constitution, the legislature has broad discretion in choosing and consolidating in laws a certain system of payment for the work of state servants; such a system is possible where a salary of a fixed amount is established, or where the minimum or maximum salaries are established for a particular position, or where remuneration for work is regulated by applying a coefficient based on a certain established value; such remuneration for work may also be composed of several constituent parts; in view of the particularities of remuneration for work, the legislature also has the discretion to establish limitations on one or several (or total sum of) constituent parts of remuneration for work;

- the constitutional institution of state service implies a certain hierarchical system of state servants and differentiated amounts of remuneration paid to them; differences in the amounts of the remuneration of state servants depend on a number of objective particularities of state service as, for instance, the nature of the functions assigned to a state institution, the complexity and extent of the functions assigned to a state servant, responsibility for the fulfilment of those functions, the particularities of the position held, the professional level and qualification of a state servant, etc.;

- since the professional activity of state servants is remunerated from the state (municipal) budget, this budget must provide for the funds for the work remuneration of state servants; the Constitution gives rise to the duty of the legislature to establish, by means of a law, the essential conditions of the work pay of persons who receive remuneration from the funds of the state (municipal) budget where the said conditions would determine their work remuneration (such as the system of payment, the components of work remuneration, the criteria on which work remuneration should depend, and their influence on work remuneration);

- when regulating the relationships in connection with the remuneration of state servants, the legislature must observe the right of a person to receive fair pay for work, which stems from Paragraph 1 of Article 48 of the Constitution; this constitutional right must be guaranteed for a state servant to the extent

not lower than for other employees; however, due to the type of state service as a specific work activity, the implementation of the said right may have certain particularities;

– the right of every individual to receive fair pay for work, which is consolidated in Paragraph 1 of Article 48 of the Constitution, is an important precondition for implementing most of other constitutional rights, *inter alia*, this right is one of the most important preconditions for implementing the right to ownership, which is consolidated in Article 23 of the Constitution; under the Constitution, a person who has completed the assigned work has the right to demand that the whole work remuneration (remuneration) due under legal acts be paid to him/her; this right of a person is guaranteed, protected, and defended as the right of ownership also under Article 23 of the Constitution; according to the Constitution, such a legal situation is impermissible where a state servant who has completed the assigned work is not paid, or is paid not in due time, or is paid an amount lower than it is due under laws and other legal acts passed on the basis of laws; such a legal situation would mean that the legal preconditions are created for violating, by means of legal acts, not only Paragraph 1 Article 48 and Article 23 of the Constitution, but also the constitutional right of ownership;

– the right to receive fair pay for work, which is consolidated in Paragraph 1 of Article 48 of the Constitution, is related to the constitutional principle of justice and means the right of a person to receive the payment for work that would be fair in view of, *inter alia*, the nature of the work, the complexity and amount of the work functions, responsibility for carrying out those functions, the particularities of the positions held, and the professional level and qualification of a person; under the Constitution, there is no tolerance for any such a legal regulation that would establish unified or substantially the same amounts of remuneration for persons who hold the positions that are different in terms of the complexity and amount of the performed functions and the responsibility that falls upon them, who have different professional level and qualification, and who are remunerated from the funds of the state or municipal budget;

– the diversity of state service implies that state servants may do different work and perform various tasks; state servants may perform their duties during days off and on holidays, as well as at night; they may also work in harmful, highly harmful, hazardous, or other conditions that deviate from the routine work regime; under the Constitution, there may not be any such a situation where a state servant who works during days off and on holidays, as well as at night, also in harmful, highly harmful, or hazardous conditions, or who performs duties above the usual workload or completes additional assignments that exceed the established length of working time, would not be paid or his/her work would be paid unjustly.

... under the Constitution, *inter alia*, the provision “Everyone ... shall have the right ... to receive fair pay for work” of Paragraph 1 of Article 48 thereof, if this provision is interpreted in the context of the constitutional concept of state service, the legislature, having broad discretion in choosing and establishing, by means of laws, a certain system of payment for the work of state servants and, *inter alia*, in establishing the constituent parts of the remuneration of state servants, is not obliged to establish such constituent parts of remuneration as additional pay and/or extra pay; having consolidated the legal regulation under which additional pay and/or extra pay are the constituent parts of remuneration paid to state servants, the legislature has the discretion to establish the maximum amount (or maximum total amount) of these constituent parts. When exercising this discretion, the legislature must observe the requirement to ensure the right of state servants to receive fair pay for work, which stems from Paragraph 1 of Article 48 of the Constitution; it is impermissible to establish such a legal regulation under which a state servant would not be paid for certain work or pay for his/her work would not be fair. On the other hand, while establishing such a legal regulation under which, in addition to the main part of the remuneration of state servants, additional pay and/or extra pay are provided for, the legislature must also observe other constitutional imperatives, *inter alia*, the requirements of justice and reasonableness, which stem from the constitutional principle of a state under the rule of law, and the constitutional concept of state service as a hierarchical system.

In view of these requirements, it should also be noted that the constitutional requirements of justice and reasonableness, which stem from the constitutional principle of a state under the rule of law, would not be observed and the preconditions for distorting the differentiation of the remuneration of state servants (in

line with the hierarchical system of state servants) would be created if such a legal regulation governing the work pay of state servants were established under which, for extra work not exceeding the established length of working time, state servants would be paid in the same way as for work exceeding the established length of working time, *inter alia*, if such a legal regulation were established under which a constituent part of the remuneration of state servants – pay for certain extra work (*inter alia*, for activity exceeding normal workload) not exceeding the established length of working time – could be equal to the main part of remuneration, let alone exceed it.

The legal regulation governing the remuneration of municipal politicians (Paragraph 1 of Article 48 and Paragraph 3 of Article 119 of the Constitution)

See 10. Local self-government and governance, 10.2. Local self-government, the ruling of 29 May 2019.

2.4.1.2.5. The right to social security in the event of unemployment

The right to social security in the event of unemployment (Paragraph 1 of Article 48 of the Constitution)

The Constitutional Court's ruling of 24 December 2008

Paragraph 1 of Article 48 of the Constitution, *inter alia*, consolidates the right of every individual to social security in the event of unemployment. If, due to certain reasons, a person loses his/her employment and cannot take care of his/her welfare, the duty arises for the state to establish such a legal regulation under which social assistance would be ensured for such a person in the event of unemployment; the legislature may choose and consolidate, in laws, a model for the provision of the said assistance, *inter alia*, various forms thereof; however, the legislature must not establish any such a legal regulation that would create the preconditions for the emergence of such a situation where persons who, due to certain reasons, have lost their employment would not receive adequate social assistance. In this context, it needs to be noted that the duty also arises for the legislature to regulate ... social assistance relationships in such a way that preconditions would be created for each member of society to take care of his/her own welfare by himself/herself and not to rely solely on state social security.

The right to social security in the event of unemployment (Paragraph 1 of Article 48 of the Constitution)

The Constitutional Court's ruling of 7 February 2013

... the constitutional principle of social solidarity also implies that the legislature, when taking into account, *inter alia*, the mission of social assistance in the event of unemployment and the financial capacities of the state and society, may establish such a legal regulation whereby persons who receive different social welfare according to laws, where the said social welfare is rendered by the state in a financial form (*inter alia*, a disability pension) and where such social welfare is capable of ensuring the conditions of living in line with human dignity, would be provided with social security not in the form of financial assistance, but in a different form in the event of unemployment.

2.4.1.2.6. The right to rest and leisure, as well as to annual paid leave

The specific nature of the activities of state and municipal politicians that is important for the legal regulation governing the organisation of their work, rest, and annual paid leave (Article 49 of the Constitution)

The Constitutional Court's ruling of 30 April 2013

The ... right of each working person to rest, which is guaranteed in Paragraph 1 of Article 49 [of the Constitution], must be ensured, *inter alia*, by regulating the activity of state politicians and municipal politicians. Paragraph 2 of Article 49 of the Constitution prescribes that the length of working time is

established by law. This constitutional provision does not mean that it is required to establish such a legal regulation of work organisation that would be the same for all categories of working persons, *inter alia*, for state servants, state politicians, and municipal politicians.

It should also be noted that, when establishing the legal regulation governing the activity of state politicians and municipal politicians, account must be taken, *inter alia*, of the specificity of this activity, which is determined by the function of politicians to represent the interests of the Nation, the state, or residents of a certain municipality (this function stems from the Constitution (*inter alia*, Articles 4 and 5, Paragraph 1 of Article 55, Articles 77, 97, 98, and 119 thereof)); account must also be taken of the powers of politicians to decide questions in relation to the formation and implementation (and control over implementation) of the policy in the spheres within the competence of the state, the competence of a certain sphere of its governance, or municipal competence, as well as the related requirements for accountability to the public, the publicity requirement, the duties of representation, and other duties. When taking account of this specificity, laws or other legal acts must establish certain requirements for the organisation of the activity of state politicians and municipal politicians, leaving for the politicians themselves to decide (either collegially or personally) other questions of the organisation of this activity. The nature of the functions and duties of state politicians and municipal politicians determine, *inter alia*, the fact that it is impossible to record all the time designated for performing these functions and duties – the time necessary to perform the functions and duties of politicians may not be identified with the prescribed working time of a certain establishment or a certain category of workers, as well as the fact that it is also, more often than not, necessary to perform their functions also on the established days off or public holidays.

Thus, from the point of view of work organisation, the activity of state politicians and municipal politicians is specific and the legal regulation governing the said activity cannot be absolutely identical to the general regulation of employment relationships, *inter alia*, when establishing requirements for the structure of working time and the accounting of working time. Consideration must also be given to the said specificity of the activity of politicians when establishing, by means of a law ... the duration of their rest and paid annual leave.

The right to leisure (Paragraph 1 of Article 49 of the Constitution)

The Constitutional Court's ruling of 30 April 2013

Paragraph 1 of Article 49 of the Constitution prescribes: "Every working person shall have the right to rest and leisure, as well as to annual paid leave."

Thus, Paragraph 1 of Article 49 of the Constitution consolidates, *inter alia*, the constitutional right to leisure, which is guaranteed to every working person.

This constitutional right must be interpreted, *inter alia*, as meaning the right of a working person, in cases and under the procedure established by the legislature, to receive time free from work when this person, due to the circumstances deemed important by the legislature, may not perform the functions of his/her work. The legislature must establish such a legal regulation that would ensure the possibility for working persons to make use of this right in reality.

The right to annual paid leave (Paragraph 1 of Article 49 of the Constitution)

The Constitutional Court's ruling of 30 April 2013

When interpreting Paragraph 1 of Article 49 of the Constitution, the Constitutional Court has ... noted that the right of a working person to annual paid leave is his/her constitutional right. Thus, the essential conditions of the implementation of this right must be established by means of a law (ruling of 7 December 2007).

... when establishing, in a law, the essential conditions for the implementation of the constitutional right to annual paid leave, which stems from Paragraph 1 of Article 49 of the Constitution, the legislature must consolidate such a legal regulation that would ensure the possibility for working persons to make use of such their constitutional right in reality.

The duty of the legislature to lay down the essential conditions for the implementation of the right to rest and leisure, as well as to annual paid leave (Article 49 of the Constitution) (on working time and leisure time, also see 2.4.1.2.3. The right to have proper, safe, and healthy conditions at work)

The Constitutional Court's ruling of 9 May 2013

The provision "Everyone ... shall have the right to have proper, safe, and healthy conditions at work" of Paragraph 1 of Article 48 of the Constitution, Article 49 thereof, and the provision "The State shall take care of the health of people" of Paragraph 1 of Article 53 thereof give rise to the duty of the state to establish a legal regulation that would create the legal preconditions for ensuring the right of an individual to have proper, safe, and healthy conditions at work, the right to rest and leisure, as well as to annual paid leave. ... the said provisions of the Constitution imply the duty of the legislature to regulate, by means of a law, the essential conditions for the implementation of these rights, *inter alia*, to define working and rest time by taking into consideration the nature and conditions of work, the maximum duration of the working time of employees whose working hours are fixed, and to regulate the duration of annual paid leave.

2.4.1.2.7. Trade unions

The constitutional status of trade unions (Article 50 of the Constitution)

The Constitutional Court's ruling of 30 September 2003

Article 50 of the Constitution formulates the basic principles of the status and activities of trade unions and indicates their functions.

When interpreting these provisions of the Constitution, the Constitutional Court held in its ruling of 14 January 1999 that trade unions are voluntary and independent organisations of employees. The employees join trade unions in order to defend their professional, economic, and social rights in an organised way. A person who joins a trade union of his/her own free will chooses this organisation as one of the forms of the protection of his/her aforesaid rights and interests. Article 50 of the Constitution is linked with Article 35 of the Constitution, which guarantees the right of citizens to freely form societies, political parties, and associations provided that the aims and activities thereof are not contrary to the Constitution and laws.

The status and principles of the activities of trade unions, as established by the Constitution, together with the striving for an open, just, and harmonious civil society and a state under the rule of law, as well as the democratic nature of the State of Lithuania, which is established in the Constitution, imply the principle of the autonomy of trade unions with respect to the state and its institutions.

In this context, it should be noted that the provision of Paragraph 1 of Article 50 of the Constitution, whereby trade unions are established freely and function independently, means, *inter alia*, that trade unions are independent of state authority and other state institutions, that they are independent of employers and their organisations, as well as of other organisations. Only freely united trade unions that are functioning independently of state authority and other state institutions, employers and their organisations, as well as independently of other organisations, can protect the professional, economic, and social rights and interests of employees. Under the Constitution, it is not allowed to lay down any such a legal regulation that would restrict or deny the constitutional right of trade unions to be established freely and to function independently while defending the professional, economic, and social rights and interests of employees.

State support for trade unions (Article 50 of the Constitution)

The Constitutional Court's ruling of 30 September 2003

The provision of Paragraph 1 of Article 50 of the Constitution, whereby trade unions are established freely and function independently, draws the limits of interaction between the state and trade unions. At the same time, the constitutional limits of support rendered by the state to trade unions are drawn. Without violating the provisions of the Constitution and taking account of the fact that, under the Constitution (Paragraph 2 of Article 50), all trade unions have equal rights, at the initial stage of the establishment and activities of free trade unions, the state could render material (including financial) support for trade unions

that were in the process of establishment or to newly established trade unions (their alliances) in Lithuania so that they could start their activities and perform independently the trade union functions consolidated in the Constitution. Such state support cannot be permanent. At this initial stage, state support rendered to trade unions should be linked not with the performance of functions by trade unions that, according to the Constitution, act independently, but with the establishment and beginning of the activities of trade unions as one of the elements of civil society. Under the Constitution, it is not allowed to lay down any such a legal regulation under which the state would render the said support for trade unions or would render it in such ways that would create the legal preconditions for violating the independence of the activities of trade unions, for making them dependent on the state and, thus, for restricting the possibilities of trade unions to defend the professional, economic, and social rights and interests of employees. Also, it is not permitted to establish any such a legal regulation whereby the state would render such support for trade unions or would render it in such ways that would violate the equality of the rights of trade unions.

2.4.2. Social rights

The principle of social solidarity

The Constitutional Court's ruling of 2 September 2009

The Constitutional Court has held on more than one occasion that, in civil society, the principle of solidarity does not deny personal responsibility for one's own fate; therefore, the legal regulation of social security should be such that would create the preconditions and incentives for all members of society to take care of their own welfare by themselves rather than to rely solely on social security guaranteed by the state. In its ruling of 5 March 2004, the Constitutional Court noted that social assistance must not create any preconditions for a person not to seek higher income and not to search, by one's own efforts, the possibilities of ensuring for oneself and one's own family the living conditions that are in line with human dignity; social assistance must not become a privilege.

The principles of social solidarity and the social orientation of the state

The Constitutional Court's ruling of 26 May 2015

The Constitutional Court has held that, under the Constitution, the State of Lithuania is socially oriented. The social orientation of the state is reflected in various provisions of the Constitution, which consolidate human economic, social, and cultural rights, as well as civil and political rights, the relationships between society and the state, the foundations of social assistance and social security, the principles of the organisation and regulation of the national economy, the foundations of the organisation and activity of state institutions, etc. (*inter alia*, the rulings of 5 March 2004 and 6 February 2012).

A socially oriented state is under the constitutional obligation to assume (and it must assume) the burden of fulfilling certain obligations. The social solidarity principle, consolidated in the Constitution, implies that the burden of the fulfilment of certain obligations should also be distributed to a certain extent among members of society; however, such distribution should be constitutionally justifiable; it must not be disproportionate; and it must not deny the social orientation of the state and the obligations to the state that arise from the Constitution (*inter alia*, the rulings of 7 June 2007 and 1 July 2013).

[...]

... the jurisprudence of the Constitutional Court defends the legal position that the social orientation of the state implies the discretion of the legislature to establish exceptions to the general legal regulation based on social solidarity and to apply them to certain groups of socially most sensitive persons who need specific social assistance (rulings of 6 February 2012 and 16 May 2013).

The principles of social solidarity and the social orientation of the state

The Constitutional Court's ruling of 24 January 2018

The Constitutional Court has held on more than one occasion that, under the Constitution, the State of Lithuania is socially oriented; thus, it is under the constitutional obligation to assume (and it must assume)

the burden of fulfilling certain obligations; the constitutional principle of social solidarity also implies the possibility of distributing this burden to a certain extent among members of society; however, this distribution must be constitutionally justified; it may not be disproportionate; it may not deny the social orientation of the state and the obligations of the state that stem from the Constitution.

... seeking to ensure the financial stability of the state social insurance system and following the constitutional principle of social solidarity, as well as distributing, to a certain extent, the burden of the implementation of the obligations stemming for the state from Article 52 of the Constitution among members of society, the legislature has the duty to establish such a relation between the contribution made (state social insurance contributions paid) by persons participating in this system and the amount of financial support (benefits) granted to persons that would ensure a balance between the interests of persons who finance the state social insurance system by paying their contributions and persons who receive benefit from this system.

2.4.2.1. The right to social security

The right to social security; old-age pensions (Article 52 of the Constitution)

The Constitutional Court's ruling of 25 November 2002

Article 52 of the Constitution prescribes: “The State shall guarantee its citizens the right to receive old-age and disability pensions, as well as social assistance in the event of unemployment, sickness, widowhood, the loss of the breadwinner, and in other cases provided for by law.”

Under the Constitution, every citizen has the right to social security. Social security is consolidated in the Constitution in various aspects. The pensions and social assistance indicated in Article 52 thereof are among the forms of social security.

The phrase “the state shall guarantee” used in Article 52 of the Constitution means that the (old-age and disability) pensions and types of social assistance (in the event of unemployment, sickness, widowhood, the loss of the breadwinner) enumerated in the same article must be provided for by means of a law and that other pensions and types of social assistance (not specified in Article 52 of the Constitution) may also be provided for by means of a law.

The provisions of Article 52 of the Constitution, while guaranteeing the right to social assistance to citizens, obligate the state to establish sufficient measures of the implementation of the right in question and its legal defence. Thus, not only the types of pensions and social assistance indicated in this article of the Constitution must be established by means of a law, but also the proper implementation and legal protection of the human right to receive a pension or social assistance must be ensured. The provisions of Article 52 of the Constitution imply the duty of the legislature to establish such a legal regulation that would ensure the accumulation of funds necessary for pensions and social assistance and that would ensure the payment of these pensions and the rendering of social assistance.

An old-age pension is one of the types of pensions that are *expressis verbis* pointed out in Article 52 of the Constitution. ... under Article 52 of the Constitution, a law must establish the age upon reaching which a person has the right to receive an old-age pension; a law must also establish the grounds and conditions for the granting and payment of this pension (as well as the amounts thereof). The legislature, when establishing this by means of a law, must pay regard to the norms and principles of the Constitution.

Attention should be paid to the fact that the collecting of the funds necessary to pay old-age pensions and the granting of these pensions are, as a rule, based on social insurance. The payment of social insurance contributions implies the right of a person to receive an old-age pension of a particular amount and this amount must depend on the paid contributions of social insurance. ...

Under the Constitution, the state, as the organisation of all society, has the obligation to take care of its members in the event of old age, disablement, unemployment, sickness, widowhood, the loss of the breadwinner, and in other cases provided for by the Constitution and laws.

In its ruling of 12 March 1997, the Constitutional Court held that the measures of social provision express the idea of public solidarity and that they help persons to protect themselves from possible social risks.

The principle of solidarity in civil society does not deny personal responsibility for one's own fate; therefore, the legal regulation of social security should be such that would create the preconditions and incentives for every member of society to take care of one's own welfare, but not to rely solely on social security guaranteed by the state.

... it is impossible to interpret the solidarity principle as establishing the discretion of the legislature to regulate the granting and payment of old-age pensions in a manner that, in the system of old-age pensions based on social insurance, the amounts of old-age pensions would not or would insignificantly depend on the amounts of contributions that have been paid when creating the material preconditions for paying such pensions. The amounts of social insurance contributions are the basis for the differentiation of the amounts of old-age pensions.

The possibility of freely choosing an occupation or business must not be restricted on the grounds that an old-age pension has been granted and paid to a person (Paragraph 1 of Article 48 and Article 52 of the Constitution)

The Constitutional Court's ruling of 25 November 2002

In its ruling of 30 June 2000, the Constitutional Court held that, under the Constitution, it is not allowed to establish any such a legal regulation by which a person, in implementing a certain constitutional right, would lose the possibility of implementing another constitutional right.

... under the Constitution, it is not permitted to establish a legal regulation that would impose such a restriction on a person who has been granted and paid an old-age pension that is designed to limit the possibility of freely choosing an occupation or business specifically because of the fact that such a person has been granted and paid an old-age pension, although he/she meets the conditions, provided for under the law, that make it possible for him/her to have a certain occupation or conduct a certain business. Such a legal regulation under which a person may not freely choose an occupation or business due to the fact that, upon the implementation of this right, he/she would not be paid the granted old-age pension or part thereof that was paid until then must also be considered a restriction on the possibility of freely choosing an occupation or business.

The right to a pension from the aspect of the protection of legitimate expectations

The Constitutional Court's ruling of 4 July 2003

... after the types of pensions, the persons entitled to a pension, the grounds and conditions for granting and paying pensions, and their amounts have been established by means of laws, the state is under the duty to follow the constitutional principles of legal certainty and the protection of legitimate expectations in the area of the relationships connected with pension provision. Therefore, the amendments to the established legal regulation that result in the worsening of pension provision are allowed only when an extreme situation occurs in the state and when this is necessary for the protection of other constitutional values. This may be done only by means of a law and without violating the Constitution (ruling of 23 April 2002).

A person who meets the conditions established in a law acquires the right to a pension established by the law. This person may reasonably expect that this right will be protected and defended by the state. When a pension established by means of a law that is not in conflict with the Constitution is granted and paid, this right and legitimate expectation acquired by a person must also be related to the protection of the rights of ownership of this person.

At the same time, it needs to be noted that the constitutional protection of acquired rights and legitimate expectations does not mean that the system of pension provision established by means of a law may not be reorganised. While reorganising this system, the Constitution must be observed in every case. The system of pensions may be reorganised only by means of a law, only by guaranteeing the old-age and disability

pensions provided for by the Constitution, as well as by observing the undertaken obligations by the state, which are not in conflict with Constitution, to pay particular benefits to persons who meet the requirements established by means of a law. If, while reorganising the system of pensions, the pensions that are established by means of a law and are not directly specified in Article 52 of the Constitution were eliminated, or the legal regulation of these pensions were amended in substance, the legislature would be obligated to establish a fair mechanism for compensating, for the incurred losses, the persons who were granted and paid such pensions.

It should also be noted that the legislature, while reorganising the system of pensions in a manner that the grounds for pension provision, persons to whom a pension is granted and paid, the conditions for the granting and payment of pensions, and the amounts of pension provision are changed, must provide for a sufficient transitional time period during which the persons who have a particular job or perform particular service that entitles them to a particular pension under the previous regulation would be able to prepare for such changes.

Old-age pensions (Article 52 of the Constitution)

The Constitutional Court's ruling of 3 December 2003

In its ruling of 25 November 2002, the Constitutional Court held that it is impossible to interpret the solidarity principle as establishing the discretion of the legislature to regulate the granting and payment of old-age pensions in a manner that, in the system of old-age pensions based on social insurance, the amounts of old-age pensions would not or would insignificantly depend on the amounts of contributions that have been paid when creating the material preconditions for paying such pensions.

The creation of the material preconditions for the payment of old-age pensions is determined both by the time period during which a person pays state social insurance contributions himself/herself or someone pays contributions for him/her and by the total amount of state social pension insurance contributions paid to the state social insurance budget. Thus, in cases where the system of old-age pensions is based on social insurance, the total contribution of a person (total amount of the obligatory state social pension insurance contributions of a person) while creating the material preconditions for the payment of a state social insurance pension could also be one of the criteria that should be taken into account when establishing the conditions for receiving a state social insurance pension.

A legal regulation that would establish the retirement age entitling to a state social insurance old-age pension where the said retirement age would enable persons to retire too early or too late or a legal regulation that would established such grounds for granting this pension that would distort the meaning of a personal contribution when creating the material preconditions for the payment of this pension or that would establish such conditions of the granting and payment of this pension that would deny the participation of a person in the creation of the material preconditions for the payment of this pension would be in conflict with the Constitution.

Paying regard to the norms and principles of the Constitution, the legislature has the right to establish the minimum state social pension insurance period, entitling to a state social insurance pension, as one of the conditions for receiving such a pension. It should also be noted that, when establishing the conditions that must be met by a person who has reached the age entitling to an old-age pension so that the said person could receive an old-age pension, the legislature should take account of all important circumstances, as well as of the personal contribution when forming the preconditions of the payment of an old-age pension, which is established in Article 52 of the Constitution. Otherwise, the legal regulation of old-age pensions would be insufficient and one-sided. It is also important that a person, having reached the age entitling to an old-age pension, would not be left without social assistance altogether.

The right to a pension from the aspect of the protection of property (Articles 23 and 52 of the Constitution)

The Constitutional Court's ruling of 3 December 2003

When interpreting the provisions of Article 23 of the Constitution, the Constitutional Court has held on more than one occasion that the inviolability of property and the protection of the rights of ownership mean, *inter alia*, that an owner, as the holder of subjective rights to property, has the right to demand that other persons not violate his/her rights and that the state has the duty to ensure the defence and protection of the rights of ownership.

... the Constitution is an integral act ... its provisions are interrelated and constitute a harmonious system. While revealing the content of the constitutional institution of the protection of the rights of ownership, account must be taken not only of Article 23 of the Constitution, but also other provisions of the Constitution that reveal different aspects of the constitutional concept of the said right, as well as of Article 52 of the Constitution. In its ruling of 4 July 2003, the Constitutional Court held that the claims of a person for the payment of the pension granted to him/her are defended not only under Article 52 of the Constitution, but also under Article 23 of the Constitution. It should be noted that, in such a case, the right to demand that pension provision benefits that are established in the Constitution or in laws not in conflict with the Constitution be paid arises also out of Article 52 of the Constitution, while, under Article 23 of the Constitution, the property aspects of this right are defended.

... the state has the duty to fulfil those obligations of property nature that it has undertaken establishing, by means of a law, such a legal regulation according to which a person who meets the conditions provided for by means of a law acquires the right to a certain pension. Thus, a person who meets the conditions established by means of a law in order to receive an old-age pension and who has been granted and paid this pension has the right to the monetary benefit of a particular amount, i.e. the right to property. Under Article 23 of the Constitution, this right must be protected and defended.

Thus, under Article 23 of the Constitution, the persons who have been granted and paid a pension established by the Constitution or the law have the right to demand that they should be continued to be paid the pension benefits in the amounts granted and paid previously. The law that establishes the grounds for such pension provision, the persons who are granted and paid pensions, the conditions for the granting and payment of pensions, as well as the amounts of pensions, must be in conformity with the norms and principles of the Constitution.

... pensions that have been granted and paid under the Constitution may be reduced only in the event of an extreme situation in the state (economic crisis, a natural disaster, etc.), when there is an objective lack of funds for the fulfilment of state functions and for satisfying public interests, including the payment of pensions. In such a case, the granted and paid pensions may be reduced to the extent that is necessary to ensure the vitally important interests of society and to protect other constitutional values. At the same time, it should be noted that the reduced pensions may only be paid on a temporary basis. In addition, when implementing the reform of the pensionary system, some pensions may be eliminated and the amounts of others may be reduced. In such a case, the legislature must establish a fair mechanism for compensating persons for the losses that have been incurred due to such an amendment of the said regulation. Otherwise, the legal regulation according to which the payment of a granted and paid pension is terminated or reduced should be judged to be in violation of Paragraph 2 of Article 23 of the Constitution, which provides that the rights of ownership are protected by law.

Pensions for service to the State of Lithuania

The Constitutional Court's ruling of 13 December 2004

When establishing such a legal regulation according to which persons who meet the conditions provided for by means of a law (retirement from service, the length of service, age, etc.) acquire the right to a certain pension for service established by means of a law, the state at the same time assumes the obligation to grant and pay such a pension. A person who meets the conditions established by means of a law has the right to demand that the state fulfil the obligation undertaken under the law and pay the benefits of the established amount (ruling of 4 July 2003). ...

The particularities of the constitutional institution of state service determine, *inter alia*, the fact that the legislature has the constitutional powers to establish, by means of a law, the pensions and/or types of social assistance granted solely to state servants (or separate groups of state servants, whose distinction is objectively justified). A law may also establish pensions for service to the State of Lithuania. When establishing such a pension for service to the State of Lithuania, the legislature is bound by the norms and principles of the Constitution (ruling of 4 July 2003) and, *inter alia*, by the constitutional imperative of social harmony, the principles of justice, reasonableness, and proportionality.

... in its ruling of 4 July 2003, the Constitutional Court held that pensions for certain service to the State of Lithuania may be established by means of a law; thus, state pensions of officials and servicemen may also be established by means of a law. By their nature and character, since they are granted to persons for their service to the State of Lithuania and are paid from the state budget, such pensions differ from state social insurance pensions (thus, also from old-age pensions). When establishing such a pension for service, the legislature is bound, *inter alia*, by the constitutional striving for an open, just, and harmonious civil society and a state under the rule of law.

If, by paying regard to the Constitution, a law provides for a pension other than that directly specified in Article 52 of the Constitution, such a pension must be guaranteed to the specified persons on the grounds and in the amounts established in the law (ruling of 10 February 2000).

When establishing the pension of officials and servicemen for service, the legislature must not establish any such a legal regulation according to which a person would be able to retire unreasonably early, or an unreasonably short length of service or work would be required in order to receive such a pension, or the amount of the remuneration of an official or serviceman would not be taken into consideration when determining the amount of a granted pension, or the principles of justice, reasonableness, and proportionality would be violated in some other way. If, in regulating pension provision for officials and servicemen, the legislature paid no regard, *inter alia*, to the imperatives of an open, just, and harmonious civil society and a state under the rule of law, which are consolidated in the Constitution, and, in particular, if the legislature took no account of the specificity of service performed by officials and servicemen, the nature of specific duties, or other significant circumstances, the granting and payment of such a pension would become a privilege; thus, such pension provision could not be guaranteed under the Constitution (ruling of 4 July 2003).

The powers of the legislature to modify the legal regulation of pensions upon the emergence of a particularly difficult economic and financial situation in the state

The Constitutional Court's ruling of 13 December 2004

... such an extreme situation in the state (economic crisis, a natural disaster, etc.) can occur where there is an objective lack of funds for the payment of pensions. In such exceptional cases, the legal regulation of pensionary relationships may be modified also by reducing pensions to the extent that is necessary to ensure vitally important interests of society and protect other constitutional values. The reduced pensions may be paid only on a temporary basis, i.e. only as long as there is an extreme situation in the state (rulings of 23 April 2002, 25 November 2002, and 4 July 2003). Still, even in such exceptional cases, pensions must not be reduced in violation of the balance between the interests of a person and society, which is consolidated in the Constitution; such reduction of pensions must be in line with the constitutional principle of proportionality (ruling of 4 July 2003).

The discretion of the legislature to choose a system of pensions

The Constitutional Court's ruling of 26 September 2007

The content of the legal regulation of social security, social provision, and social assistance is determined by various factors, *inter alia*, the resources and the material and financial possibilities of the state and society. The legislature, when paying regard to the Constitution, has broad discretion in this area, *inter alia*, to choose a system of pensions. The fact that, in Lithuania, such a system of pensions was chosen

in which funds collected from compulsory state social insurance contributions is the main source of financing the system of pensions may not be questioned with regard to its compliance with the Constitution.

State pensions

The Constitutional Court's ruling of 22 October 2007

... under the Constitution, a law may also establish pensions other than those directly named in the Constitution; for instance, the particularities of the constitutional institution of state service determine, *inter alia*, the fact that the legislature has the constitutional powers to establish, by means of a law, the pensions and/or types of social assistance granted exclusively to state servants or separate groups of state servants, whose distinction is objectively justified; a law may also establish pensions for service to the State of Lithuania.

[...]

In some cases, state pensions (which, as mentioned before, are not directly named in the Constitution) are granted for certain service and, in other cases, they are granted in recognition of merit to the State of Lithuania, or to victims as compensation. In establishing persons who are granted and paid state pensions, the grounds and conditions for granting and paying state pensions, as well as the amounts of such pensions, the legislature is obliged to pay regard to the constitutional imperative of social harmony and the principles of justice, reasonableness, and proportionality; the granting and payment of a state pension must not become a privilege. If the legislature, when establishing, by means of a law, the grounds for the aforesaid pension provision, persons who are granted and paid the aforesaid pensions, the conditions for granting and paying these pensions, as well as their amounts, did not pay regard to the Constitution (e.g. if the legislature granted state pensions to persons who may not be granted such pensions, or set unreasonably large or small amounts of these pensions, or established unreasonable conditions for granting and paying these pensions), then such pension provision could not be defended under the Constitution. For example, when establishing the state pension of officials and servicemen for service, it is not allowed to establish any such a legal regulation according to which a person would be able to retire unreasonably early, or an unreasonably short length of service or work would be required in order to receive such a pension, or the amount of the remuneration of an official or serviceman would not be taken into consideration when determining the amount of a granted pension, or the principles of justice, reasonableness, and proportionality would be violated in some other way; if no regard is paid to the particularities of the service of officials and servicemen, the particular type of duties, or other important circumstances, the granting and payment of such a pension would become a privilege; therefore, such pension provision could not be guaranteed under the Constitution (rulings of 4 July 2003 and 13 December 2004). In addition, state pensions differ as to their nature and character from state social insurance pensions and are paid from the state budget; thus, taking account of all significant circumstances and having regard to the Constitution, the legislature may, by means of a law, establish the maximum amount of such pensions and consolidate various ways for determining this amount. The legislature, taking account of the Constitution, may also establish certain cases where a state pension is not granted to a person (under the conditions provided for in the law); having regard to the Constitution, the legislature may also establish, by means of a law, the cases where a granted state pension is no longer paid. On the other hand, in the case of the state pensions that are granted for certain service, or in recognition of merit to the State of Lithuania, or to victims as compensation, the provision regarding the obligation undertaken by the state to grant and pay the respective pension to a person who meets the conditions established by means of a law and regarding the right of the said person to demand that the state fulfil such an obligation undertaken under the law is also effective. However, the Constitution does not prevent reorganising the system of pension provision, *inter alia*, in a manner that would eliminate the pensions that are established by means of laws, but are not directly specified in Article 52 of the Constitution; in such a case, the legislature would be obligated to establish a fair mechanism for compensating, for the incurred losses, the persons who were granted and paid such pensions; the legislature would also have to provide for a sufficient transitional time period during which

the persons who have a particular job or perform particular service that entitles them to a particular pension (i.e. a state pension) under the previous regulation would be able to prepare for such changes.

The protection of acquired rights in the course of reorganising the system of social guarantees

The Constitutional Court's ruling of 22 November 2007

... the Constitution protects and defends the acquired rights; therefore, the modification of the social policy, the reorganisation of the system of social guarantees or of individual social guarantees of the state must be constitutionally justifiable; if, in the course of the reorganisation of the system of social guarantees or the structure of individual social guarantees, the extent of social guarantees is reduced, let alone certain social guarantees disappear, a mechanism of fair compensation for the incurred losses should be established for individuals to whom those social guarantees were reasonably established and, if those guarantees have to compensate the losses that an individual may incur due to his/her own activities (*inter alia*, due to his/her service to the state), a sufficient time period should also be envisaged so that it would enable those persons (who have a particular job or perform particular service that entitles them to particular social guarantees under the previous regulation) to prepare for the respective changes. If the necessity to establish a particular social guarantee arises from the Constitution, such a social guarantee may not generally be subject to cancellation prior to the consolidation of the other one instead.

It should also be noted that the social orientation of the state consolidated in the Constitution generally obligates the state to respect the imperative of the reality of the guarantees of a social (material) nature; thus, it obligates the state to accordingly revise (increase the amounts of) social (material) guarantees once established (and applied) if an economic and social situation changes in such a way that those established (and applied) guarantees depreciate considerably, let alone become nominal altogether (at the same time, making a reservation regarding the proportional and provisional reduction of benefits whenever this is necessary for the protection of other constitutional values) (ruling of 22 October 2007).

The right of persons whose health was impaired as a result of improper, unsafe, or unhealthy conditions at work to social assistance (Paragraph 1 of Article 48, Article 52, and Paragraph 1 of Article 53 of the Constitution)

The Constitutional Court's ruling of 29 April 2008

Interpreting Article 52 of the Constitution together with Paragraph 1 of Article 48 thereof, whereby everyone may freely choose an occupation or business and has the right to have proper, safe, and healthy conditions at work, as well as to receive, *inter alia*, social security in the event of unemployment, and with Paragraph 1 of Article 53 of the Constitution, whereby the state also takes care of the health of people, and taking account of the constitutional principle of justice and the imperative of social harmony, which is enshrined in the Constitution, it needs to be held that the state is constitutionally obligated to render the respective social assistance to a person whose health was impaired as a result of improper, unsafe, or unhealthy conditions at work (including accidents at work and occupational diseases) and to ensure the provision of the respective social assistance; the legislature may choose and consolidate, in laws, a certain model of the provision of the said assistance, *inter alia*, various forms thereof (state, private, etc.); however, it is not permitted to establish any such a legal regulation that would create the preconditions for the emergence of a situation where a person whose health was impaired as a result of improper, unsafe, or unhealthy conditions at work (including accidents at work and occupational diseases) would not receive adequate social assistance.

When taking account of various factors, *inter alia*, the resources and the material and financial possibilities of the state and society, and accordingly regulating the relationships linked with the provision of social assistance to a person whose health was impaired as a result of improper, unsafe, or unhealthy conditions at work (including accidents at work and occupational diseases), the legislature has broad discretion. Certain grounds, conditions, and amounts of the granting and payment of such social assistance that are established by means of a law may be varied.

The right to a disability pension (Article 52 of the Constitution)

The Constitutional Court's ruling of 2 September 2009

... when interpreting Article 52 of the Constitution together with the provision of Paragraph 1 of Article 53 of the Constitution, according to which the state, *inter alia*, takes care of the health of people, with the provision of Paragraph 2 of Article 21 of the Constitution, which consolidates the protection of human dignity, as well as with Paragraph 1 of Article 48 of the Constitution, according to which everyone may freely choose an occupation or business and has the right to have proper, safe, and healthy conditions at work and to receive social security in the event of unemployment, and taking account of the constitutional principles of proportionality and the equality of the rights of persons, as well as the imperative of social harmony, which is enshrined in the Constitution, it should be held that the state has the constitutional obligation to ensure the creation of such a social protection system (*inter alia*, a system of social assistance and disability pensions) that a person who, due to health disorders (caused by illness, an accident, an occupational disease, innate health disorders, etc.), permanently or temporarily did not acquire or lost the possibility of earning a living from work or business income, or where such possibilities significantly diminished for the said person, would receive social assistance and/or a disability pension in the cases provided for by means of a law.

The legislature, by taking account of various factors, *inter alia*, the resources and the material and financial possibilities of the state and society, also has broad discretion to regulate the relationships linked with granting social assistance and/or a disability pension to a person who, due to health disorders (caused by illness, an accident, an occupational disease, innate health disorders, etc.), permanently or temporarily did not acquire or lost the possibility of earning a living from work or business income, or where such possibilities significantly diminished for the said person.

[...]

At the same time, it needs to be noted that the legislature may not establish any such a legal regulation that would create the preconditions for such a situation where a person who, due to health disorders (caused by illness, an accident, an occupational disease, innate health disorders, etc.), permanently or temporarily did not acquire or lost the possibility of earning a living from work or business income, or where such possibilities significantly diminished for the said person, would not receive the respective social assistance and/or a disability pension.

[...]

... it is also not allowed to establish any such a legal regulation whereby the acquisition of the right to receive a disability pension or the retention of the said right, which is guaranteed under the Constitution for a person who, due to health disorders (caused by illness, an accident, an occupational disease, innate health disorders, etc.), permanently or temporarily did not acquire or lost the possibility of earning a living from work or business income, or where such possibilities significantly diminished for the said person, would be linked with constitutionally unjustified conditions, subjective decisions of any institutions or officials, or other circumstances that do not encourage persons to take care of their health.

... under Article 52 of the Constitution, the right to a disability pension is guaranteed to such persons and on such grounds that are provided for by means of laws. The regulation of social assistance relationships that is laid down under laws is one of the most important guarantees of the constitutional right to a disability pension.

A law must establish ... what should be deemed to be disability, as well as the grounds for granting and payment of [a disability] pension, its conditions and amounts (rulings of 3 December 2003 and 22 October 2007).

[...]

... in the course of regulating the relationships connected with granting a disability pension to a person, taking into account the grounds established by means of a law and various factors, first of all, the type of the health impairment (disorder) of a person, a disability pension may be granted and paid temporarily (for a certain period) or permanently. The time period of paying a disability pension that is granted to a person

(*inter alia*, the minimum and maximum periods, the criteria differentiating these periods) is one of the conditions of paying a disability pension; therefore, such a time period must be established by means of a law.

The legislature may differentiate the conditions for granting and paying a disability pension (including the time periods of disability and those of paying a disability pension) and their amounts on various grounds, by taking into account, *inter alia*, the state of health of a person, and other factors; as regards the amounts of pensions, the legislature may also take into consideration the participation of the person in insurance against particular social risks.

The constitutional requirements of legal certainty, legal security, and the protection of legitimate expectations imply that the conditions (which must be established by means of a law) for granting and paying a disability pension (including the time period (term) of paying a pension that is granted to a person) must be clear and non-discriminatory; meanwhile, the established period (term) of paying a disability pension during which the granted pension is paid must be neither unreasonably short nor changed too often. Otherwise, human dignity and human health may become undermined and the imperatives that stem from Paragraph 1 of Article 53 and Article 21 of the Constitution may be disregarded.

The powers of the legislature to modify the legal regulation of pensions upon the emergence of a particularly difficult economic and financial situation in the state

The Constitutional Court's decision of 20 April 2010

... the phrase “the state shall guarantee” used in Article 52 of the Constitution implies the duty of the legislature to establish such a legal regulation that would ensure the accumulation of the funds necessary to pay pensions and the payment of pensions. However, such an extreme situation (economic crisis etc.) in the state can occur when there is an objective lack of funds for the payment of pensions. In such exceptional cases, the legal regulation of pensionary relationships may be modified also by reducing pensions to the extent that is necessary to ensure the vitally important interests of society and protect other constitutional values. The reduced pensions may be paid only on a temporary basis, i.e. only as long as there is an extreme situation in the state (rulings of 23 April 2002, 25 November 2002, 4 July 2003, 3 December 2003, 13 December 2004, and 24 December 2008).

... the emergence of a particularly difficult economic and financial situation (due to an economic crisis) in the state does not in itself imply the right of the legislature to modify the legal regulation of pensionary relationships – to reduce the granted and paid pensions; when there is a particularly difficult economic and financial situation, the state must take all possible measures in order to overcome the economic crisis and to secure the accumulation of the funds necessary for paying pensions. In this context, it also needs to be noted that the state institutions forming and pursuing the state economic and finance policies may not first resort to such measures (*inter alia*, to reduce pensions and other social guarantees) for overcoming an economic and financial crisis in the course of the implementation of which the burden of overcoming the crisis is put upon persons. The measures for overcoming a difficult economic and financial situation in the state must be implemented in a complex manner; they must be coordinated, *inter alia*, in such a way that the balance between the interests of a person and society, which is consolidated in the Constitution, would not be disturbed. Only in an exceptional case, where it is impossible to accumulate (no success is made in accumulating) the amount of funds necessary to pay pensions after all internal and external possibilities have been used, the pensionary legal regulation may be modified by reducing pensions. It needs to be emphasised that, even in such exceptional cases, the granted and paid pensions must not be reduced in violation of the balance of the interests of a person and society, which is consolidated in the Constitution, i.e. in violation of the constitutional principle of proportionality.

[...]

It has been mentioned that the reduced pensions may be paid only on a temporary basis, i.e. as long as there is an extreme situation (*inter alia*, an economic crisis) in the state; however, this doctrinal provision may not be interpreted as meaning that the state, after the legislature has reduced the granted and paid pensions, is exempted from the duty to look for ways for the accumulation of the funds necessary for the

payment of pensions. Quite to the contrary, if, before the end of an economic crisis, the possibility arises to accumulate (receive) the funds necessary to pay the pensions in the amounts that were before the reduction of the pensions, the legal regulation under which the pensions were reduced must be repealed.

Under the Constitution, *inter alia*, under the constitutional principles of a state under the rule of law and responsible governance, the state institutions forming and pursuing state economic and financial policies must also assess the fact that, due to extreme circumstances (economic crisis etc.), a particularly difficult economic and financial situation may arise in the state. Therefore, the state institutions must take all possible measures in order to predict the tendencies in the economic development of the state and to prepare for the possible emergence of such very difficult economic and financial situations.

[...]

... it needs to be held that the modification of the legal regulation by reducing old-age pensions even due to the fact that there is an extreme situation (economic crisis etc.) in the state means a limitation on the constitutional social guarantee of a person – an old-age pension. ... the modification of the legal regulation whereby old-age pensions are reduced due to the fact that, upon the emergence of an extreme situation (economic crisis etc.), the economic and financial situation changes in such a way that the accumulation of the funds necessary to pay old-age pensions is not ensured also means that such a legal regulation, to a certain extent, limits the right of property of a person to whom an old-age pension was granted and paid.

Thus, the legislature, upon the emergence of an extreme situation, when, *inter alia*, due to an economic crisis, it is impossible to accumulate the amount of the funds necessary to pay old-age pensions, must, while reducing old-age pensions, provide for a mechanism for compensating, for the incurred losses, the persons who were granted and paid such pensions; based on this mechanism, after the said extreme situation is over, the state would undertake the obligation to such persons to compensate them, within a reasonable time and in a fair manner, for the losses incurred due to the reduction of old-age pensions.

These provisions are also *mutatis mutandis* applied with regard to compensation for losses incurred due to the reduction of disability pensions.

... under the Constitution, it is also allowed to establish, by means of a law, pensions other than those *expressis verbis* specified in Article 52 of the Constitution. At present, such pensions include state pensions. ...

... the modification of the legal regulation whereby state pensions are reduced to a large extent due to the fact that, upon the emergence of an extreme situation (economic crisis etc.), the economic and financial situation changes in such a way that the accumulation of the funds necessary to pay state pensions is not secured is an essential amendment to the legal regulation of these pensions. Thus, the legislature, upon the emergence of an extreme situation when, *inter alia*, due to an economic crisis, it is impossible to accumulate the amount of the funds necessary to pay state pensions, must, while reducing state pensions to a large extent, provide for such a mechanism for compensating, for the incurred losses, the persons to whom such pensions were granted and paid whereby, after the said extreme situation is over, the state would undertake the obligation to such persons to compensate them, in a fair manner and within a reasonable time, for the losses incurred by them due to the reduction of state pensions.

... state pensions differ as to their nature and character from state social insurance old-age pensions, as well as from other state social insurance pensions; these particularities imply that, when there is a particularly difficult economic and financial situation in the state and when, due to this, it is necessary to temporarily reduce pensions in order to secure the vitally important interests of society and the state and to protect other constitutional values, the legislature may reduce these pensions to the extent that is greater than the reduction of old-age or disability pensions. ... it needs to be held that these particularities also imply that the losses incurred due to the reduction of state pensions may be compensated to the extent that is lower than compensation for the losses incurred due to the reduction of old-age or disability pensions.

The pension of judges as a social (material) guarantee of judges (Articles 52 and 109 of the Constitution)

See 9.1. Courts, 9.1.3. The independence of judges and courts and the guarantees of their independence), the ruling of 29 June 2010.

The right to social assistance in the event of the loss of the breadwinner (Article 52 of the Constitution)

The Constitutional Court's ruling of 14 December 2010

... when interpreting Article 52 of the Constitution, which provides, *inter alia*, that the state guarantees social assistance in the event of the loss of the breadwinner, it needs to be stated that, by taking account of the imperative of social harmony, which is consolidated in the Constitution, the state is constitutionally obligated to render the respective social assistance to persons who lost their breadwinner. Under the Constitution, when establishing, by means of a law, social assistance in the event of the loss of the breadwinner, the legislature has discretion. This discretion includes, *inter alia*, the discretion to establish the types of social assistance in the event of the loss of the breadwinner, the persons who are granted concrete social assistance, and the conditions for granting and paying this social assistance; the said discretion also includes the discretion to differentiate the amount of social assistance granted to persons where their status is objectively different. At the same time, it needs to be noted that this assistance must be such that would ensure the living conditions compatible with human dignity.

The legislature, taking account of the resources and the material and financial possibilities of the state and society, may choose which social assistance must be rendered to underage children (*inter alia*, to disabled ones) who have lost their parents. Separate types of social assistance may be varied. The legislature may, by means of a law, also establish a pension for underage children who have lost their parents, *inter alia*, to the disabled (ones with incapacities) (by naming it, *inter alia*, the pension of orphans). It needs to be noted that the provision of Paragraph 6 of Article 38 of the Constitution consolidates the duty of parents to support their children until they reach the age of majority. Thus, the establishment of a pension for underage children who have lost their parents may be regarded as certain compensation for the support that, under the provision of Paragraph 6 of Article 38 of the Constitution, had to be provided to them by their parents.

The legislature has broad discretion when implementing the social policy; however, the conditions for granting and paying the said pension, *inter alia*, the age limit (majority) up to which this pension may be granted, as well as the age limit up to which the granted pension may be paid, must be established by means of a law.

... the period of payment of the said pension to children with incapacities (disabled children) who have lost their parents may be also related, *inter alia*, to such age up to which children who have lost their parents generally seek the respective education.

The grounds for pension provision and social assistance (Article 52 of the Constitution)

The Constitutional Court's ruling of 6 February 2012

When forming the official constitutional doctrine of a socially oriented state, *inter alia*, revealing the imperatives that stem from the Constitution, where the said imperatives must be complied with when pensionary relationships are regulated by legal acts, the Constitutional Court has held the following (*inter alia*, the rulings of 22 October 2007, 24 December 2008, and 2 September 2009 and the decision of 20 April 2010):

– the provisions of Article 52 of the Constitution express the social orientation (social character) of the state, while social provision, i.e. the contribution of society to the maintenance of such its members who are incapable of providing themselves from work or other means or who are not sufficiently provided due to important reasons established by means of laws is given the status of a constitutional value; the measures of social security express the idea of social solidarity and help a person to protect himself/herself from possible social risks; the provisions of Article 52 of the Constitution, which guarantee the right of citizens to social provision, obligate the state to establish sufficient measures to implement and legally protect the said right; the state is obliged to create such a system of social provision that would help to

maintain the conditions of living in line with human dignity and, where necessary, would provide a person with essential social assistance;

– Article 52 of the Constitution lays down the grounds for pension provision and social assistance; according to this article of the Constitution, while implementing the constitutional principle of public solidarity and by helping a person to protect himself/herself from possible social risks and, at the same time, creating the preconditions for every member of society to take care of his/her own welfare (rather than to rely solely on state social security), the legislature must establish, by means of a law, old-age pensions and disability pensions, as well as social assistance in the event of unemployment, sickness, widowhood, or the loss of the breadwinner; under the Constitution, a law may also provide for other pensions or social assistance in addition to those indicated in Article 52 of the Constitution;

– the right of a person to social security should be interpreted by taking account of the imperatives consolidated in the Constitution in relation to social harmony and justice, as well as of the constitutional principles of the equality of the rights of persons and proportionality;

– the principle of solidarity in civil society does not deny personal responsibility for one's own fate; therefore, the legal regulation of social security should be such that would create the preconditions and incentives for all members of society to take care of their own welfare by themselves rather than to rely solely on social security guaranteed by the state; social support must not create any preconditions for a person not to seek higher income and not to search, by one's own efforts, the possibilities of ensuring for oneself and one's own family the living conditions that are in line with human dignity; social support must not become a privilege; the recognition of mutual responsibility between a person and society is important in ensuring social harmony, as well as in guaranteeing freedom of a person and the possibility for a person to protect himself/herself from difficulties that the person alone would be unable to overcome;

– the provisions of Article 52 of the Constitution imply the duty of the legislature to establish such a legal regulation that would ensure the accumulation of funds necessary for pensions and social assistance, the payment of these pensions, and the rendering of social assistance; on the other hand, the burden of the obligations undertaken by the state falls upon entire society; therefore, the said legal regulation should create the preconditions for distributing (certainly, by taking account, *inter alia*, of the constitutional principle of solidarity, the constitutional imperatives of social harmony and justice) the respective burden of the state among members of society; however, this burden must be distributed in such a manner that the fulfilment of the duty to pay state social insurance contributions would not become an overly heavy burden and a person, due to the fact that he/she is fulfilling this duty, would not become in need of social assistance himself/herself;

– under the Constitution, the grounds for pension provision, persons who are granted and paid pensions, the conditions for granting and paying pensions, as well as the amounts of pensions, are established exclusively by means of a law;

– the wording “the state shall guarantee” used in Article 52 of the Constitution means, *inter alia*, that pensions and various types of social assistance are guaranteed for persons on the grounds and in the amounts that are established in laws and that persons who meet the conditions provided for under laws have the right to demand that the state grant and pay this pension to them; after the types of pensions, the persons entitled to a pension, the grounds and conditions for granting and paying pensions, and their amounts have been established by means of laws, the duty arises for the state to follow the constitutional principles of the protection of legitimate expectations and legal certainty in the area of pension provision relationships;

– statutory acts may establish only the procedure for the implementation of the laws regulating social security relationships; the statutory legal regulation of these relationships may comprise the establishment of the respective procedures, as well as such a legal regulation based on laws where the need to provide more details about and particularise, in statutory legal acts, the legal regulation established in laws is objectively caused by the necessity in the law-making process to draw on expert knowledge or special (professional) competence in a certain area.

The right to a pension from the aspect of the protection of property (Articles 23 and 52 of the Constitution)

The Constitutional Court's ruling of 6 February 2012

In its acts, the Constitutional Court has held on more than one occasion that the right to demand the pension provision benefits that are established in the Constitution and in laws not in conflict with the Constitution arises from Article 52 of the Constitution, while the property aspects of this right are defended under Article 23 thereof (rulings of 4 July 2003, 3 December 2003, 22 October 2007, and 24 December 2008 and the decision of 20 April 2010); under Article 23 of the Constitution, persons who have been granted and paid a pension established in the Constitution or the law have the right to demand that the pension benefits be paid further to them in the amounts that were granted and paid previously (rulings of 4 July 2003, 3 December 2003, 24 December 2008, and 2 September 2009 and the decision of 20 April 2010). In this context, it needs to be noted that the concept of the constitutional right to a pension as a periodic monetary benefit may not be identified with the concept of the right of property in ordinary law, *inter alia*, civil law.

The right to an old-age pension (Article 52 of the Constitution)

The Constitutional Court's ruling of 6 February 2012

One of the types of pensions specified *expressis verbis* in Article 52 of the Constitution is an old-age pension. Under Article 52 of the Constitution, the age upon reaching which a person has the right to receive an old-age pension, the grounds for granting and paying such a pension, the conditions and amounts thereof must be established by means of a law; when establishing this, the legislature must pay regard to the norms and principles of the Constitution (rulings of 25 November 2002, 3 December 2003, and 22 October 2007 and the decision of 20 April 2010). A person who meets the conditions established under the law in order to receive an old-age pension and who has been granted and paid this pension has the right to the monetary benefit of a particular amount, i.e. the right to property; this right must be protected and defended also under Article 23 of the Constitution (rulings of 25 November 2002, 3 December 2003, and 13 December 2004 and the decision of 20 April 2010). The Constitutional Court has on more than one occasion drawn attention to the fact that the payment of social insurance contributions entails the right of a person to receive an old-age pension of a particular amount and that it is necessary to ensure that this amount would depend on the amounts of contributions that have been paid (rulings of 25 November 2002, 3 December 2003, and 26 September 2007 and the decision of 20 April 2010); the amounts of social insurance contributions are the basis for the differentiation of the amounts of old-age pensions (ruling of 25 November 2002 and the decision of 20 April 2010).

State pensions

The Constitutional Court's ruling of 6 February 2012

The Constitutional Court has held that state pensions, which are not directly named in Article 52 of the Constitution, differ as to their nature and character from state social insurance pensions: state pensions are granted to persons for service or in recognition of their merit to the State of Lithuania, as well as to victims specified in the law as compensation; state pensions are paid from the state budget (rulings of 4 July 2003, 3 December 2003, 22 October 2007, 24 December 2008, and 29 June 2010 and the decision of 20 April 2010); the receipt of these pensions is linked not with the social insurance pension contributions of an established amount, but with the particular status of a certain person (his/her service, merit, or other circumstances upon which the granting of a state pension depends); the particularities of state pensions permit the legislature, taking account of all significant circumstances and having regard to the norms and principles of the Constitution, to establish the respective conditions for granting these pensions (rulings of 24 December 2008 and 29 June 2010 and the decision of 20 April 2010); the discretion of the legislature in establishing the granting of state pensions is broader than in regulating other pensions; the conditions for granting state pensions may be very different and may depend on, *inter alia*, the particularities of service

and the economic capacities of the state (ruling of 24 December 2008); the legislature may establish, by means of a law, the maximum amount of such pensions and consolidate various ways for determining this amount; on the other hand, in the case of state pensions, the provision regarding the obligation undertaken by the state under the law to grant and pay the respective pension to a person who meets the conditions established by means of a law and regarding the right of the said person to demand that the state fulfil such an obligation undertaken under the law is also effective (rulings of 22 October 2007 and 29 June 2010 and the decision of 20 April 2010).

The possibility of freely choosing an occupation or business must not be restricted on the grounds that a pension has been granted and paid to a person

The Constitutional Court's ruling of 6 February 2012

In the jurisprudence of the Constitutional Court, it has ... been held more than once that, when regulating pensionary relationships, it is necessary to have regard to Paragraph 1 of Article 48 of the Constitution, which, *inter alia*, enshrines the possibility for an individual to choose an occupation or business at his/her own discretion (i.e. by his/her own free decision); the constitutional freedom of each individual to choose an occupation or business implies the duty of the legislature to create the legal preconditions for implementing this freedom; the official constitutional doctrine of human rights is also based on the principled provision that, under the Constitution, it is not allowed to establish any such a legal regulation by which a person, in implementing a certain constitutional right, would lose the possibility of implementing another constitutional right; thus, under the Constitution, it is not permitted to establish such a legal regulation that would impose such a restriction on a person who has been granted and paid an old-age pension that is designed to limit the possibility of freely choosing an occupation or business specifically because of the fact that such a person has been granted and paid an old-age pension, although he/she meets the conditions, provided for by means of a law, that make it possible for him/her to have a certain occupation or conduct a certain business; such a legal regulation under which a person may not freely choose an occupation or business due to the fact that, upon the implementation of this right, he/she would not be paid the granted old-age pension or part thereof that was paid until then must also be considered a restriction on the possibility of freely choosing an occupation or business; this provision must *mutatis mutandis* be applied to other types of pensions, *inter alia*, state pensions provided for by means of a law (ruling of 22 October 2007 and the decision of 20 April 2010).

The powers of the legislature to modify the legal regulation of pensions upon the emergence of a particularly difficult economic and financial situation in the state

The Constitutional Court's ruling of 6 February 2012

... as it was held in the Constitutional Court's decision of 20 April 2010, the requirements that stem from the constitutional principles of a state under the rule of law, the equality of rights, justice, proportionality, the protection of legitimate expectations, legal certainty, legal security, and social solidarity, as well as other constitutional imperatives, must be also be complied with when there is an extreme situation in the state (economic crisis etc.) due to which the economic and financial situation in the state, despite various other measures that are applied for overcoming the economic crisis, has changed to the extent that, *inter alia*, the accumulation of the funds necessary for the payment of pensions is not ensured and, due to this, the legal regulation is modified by reducing pensions.

It needs to be noted that, in its final acts, the Constitutional Court has revealed quite a few requirements that stem from the Constitution and must be complied with while modifying the legal regulation of the relationships connected with pension provision in a particularly difficult economic and financial situation in the state.

The Constitutional Court has held on more than one occasion that such an extreme situation in the state (economic crisis etc.) can occur when there is an objective lack of funds for the payment of pensions and that, in such exceptional cases, the legal regulation of pensionary relationships may also be modified

by reducing pensions to the extent that is necessary to ensure the vitally important interests of society and protect other constitutional values; the reduced pensions may be paid only on a temporary basis, i.e. only as long as there is an extreme situation in the state (rulings of 25 November 2002, 4 July 2003, 3 December 2004, 13 December 2004, and 24 December 2008 and the decision of 20 April 2010).

The Constitutional Court has emphasised that, in itself, the emergence of a particularly difficult economic and financial situation (due to an economic crisis) in the state does not imply the right of the legislature to modify the legal regulation of pensionary relationships – to reduce the granted and paid pensions; when there is a particularly difficult economic and financial situation, the state must take all possible measures in order to overcome the economic crisis and to ensure the accumulation of the funds necessary for paying pensions; only in an exceptional case, where it is impossible to accumulate (no success is made in accumulating) the amount of funds necessary to pay pensions after all internal and external possibilities have been used, the pensionary legal regulation may be modified by reducing pensions (decision of 20 April 2010). Even in such exceptional cases, the granted and paid pensions may not be reduced in violation of the balance of the interests of a person and society, which is consolidated in the Constitution, i.e. in violation of the constitutional principle of proportionality (rulings of 25 November 2002, 4 July 2003, 3 December 2003, 13 December 2004, and 24 December 2008 and the decision of 20 April 2010).

As it was held in the Constitutional Court's decision of 20 April 2010, the principle of proportionality implies that the reduction of granted and paid pensions must be in line with the legitimate objectives that are important to society; such reduction must be necessary to reach the said objectives and must not restrict the rights and freedoms of a person clearly more than necessary in order to reach those objectives.

The constitutional principle of proportionality, *inter alia*, also means that when there is a particularly difficult economic and financial situation in the state and when, due to this, it is necessary to temporarily reduce the granted and paid pensions in order to ensure the vitally important interests of society and the state and to protect other constitutional values, the legislature is under the obligation to establish such a uniform and non-discriminatory scale of the reduction of pensions whereby pensions would be reduced in a manner not violating the proportions of the amounts of pensions established with regard to pensioners of the same category prior to the emergence of a particularly difficult economic and financial situation in the state (decision of 20 April 2010).

The Constitutional Court has also held that the particularities of state pensions, whose nature and character are different from those of old-age pensions and disability pensions, imply that the legislature may modify the legal regulation of such pensions of a different nature by reducing these pensions to the extent that is greater than the reduction of old-age pensions and disability pensions; however, when doing so, it is not allowed to violate the proportions of the amounts of state pensions established prior to the emergence of a particularly difficult economic and financial situation in the state (decision of 20 April 2010).

... the constitutional imperatives of a state under the rule of law, justice, proportionality, the equality of rights, as well as social solidarity, *inter alia*, mean that the burden of an economic and financial crisis should be evenly and proportionately shared by all society. At the same time, it needs to be noted that, as held by the Constitutional Court, the constitutional principles of a state under the rule of law, the equality of rights, justice, and proportionality do not mean that it is not allowed to establish such a limit on the amounts of pensions below which pensions would not be reduced even when there is a particularly difficult economic and financial situation in the state; while establishing this limit, it is necessary to take into account the circumstance that, under the Constitution, it is not allowed to establish any such a legal regulation whereby pensions would be reduced to such an amount where the person receiving the pension would not be secured minimal socially acceptable needs and living conditions compatible with human dignity; a pension that secures only minimal socially acceptable needs and living conditions compatible with human dignity for a person who receives such a pension may not be reduced at all (decision of 20 April 2010).

... the social orientation of the state, which is enshrined in the Constitution, implies the discretion of the legislature, in a particularly difficult economic and financial situation in the state and, thus, if necessary,

to reduce pensions and other social benefits temporarily, upon the assessment of the resources and the material and financial possibilities of the state and society, as well as other significant circumstances, to establish exceptions that would also be applicable to certain other groups of socially most sensitive persons who need special social assistance, i.e. to establish that pensions and other social benefits are not reduced for these groups of persons or are reduced to a smaller extent in order to ensure the conditions of living in line with human dignity. When establishing these exceptions, it is necessary to follow, *inter alia*, the imperatives of a state under the rule of law, the equality of rights, justice, proportionality, and social solidarity, which are enshrined in the Constitution.

In its decision of 20 April 2010, the Constitutional Court emphasised that, even when there is an extreme situation in the state (economic crisis etc.) because of which pensions may be reduced, it is also necessary to pay regard to the requirement, which arises from the Constitution, not to establish such a legal regulation under which the possibility for a person who has been granted and paid a pension, *inter alia*, an old-age pension, would be restricted, due to this, to freely choose an occupation and business, although he/she meets the conditions provided for by means of a law that make it possible for him/her to have a certain occupation or conduct a certain business (decision of 20 April 2010). In this decision, it was also held that, when there is a particularly difficult economic and financial situation in the state and when, due to this, it is necessary to temporarily reduce granted and paid pensions in order to secure the vitally important interests of society and the state and to protect other constitutional values, it is not permitted to establish any such a legal regulation whereby an old-age or disability pension granted and paid to persons who have a certain occupation or conduct a certain business would be reduced, due to this, to the extent that is greater compared with persons who do not have any occupation or do not conduct any business. As mentioned before, the Constitutional Court has noted that the provision “such a legal regulation under which a person may not freely choose an occupation or business due to the fact that, upon the implementation of this right, he/she would not be paid the granted old-age pension or part thereof that was paid until then must also be considered a restriction on the possibility of freely choosing an occupation or business” of the official constitutional doctrine is *mutatis mutandis* also applicable with regard to other pensions, *inter alia*, state pensions provided for by means of a law.

... it needs to be held that when there is a particularly difficult economic and financial situation in the state and when, due to this, there is the necessity temporarily to reduce the pensions in order to secure the vitally important interests of society and the state and to protect other constitutional values, it is not permitted to establish any such a legal regulation whereby a state pension granted and paid to persons who have a certain occupation or conduct a certain business would be reduced, due to this, to the extent that is greater compared with persons who do not have any occupation and do not conduct any business.

In the Constitutional Court’s decision of 20 April 2010, it was held that the modification of the legal regulation by reducing old-age pensions due to the fact that there is an extreme situation in the state (economic crisis etc.) means a limitation on the constitutional social guarantee of a person – an old-age pension; such a legal regulation limits, to a certain extent, the right of ownership of a person to whom an old-age pension was granted and paid; thus, the legislature, upon the emergence of an extreme situation, when, *inter alia*, due to an economic crisis, it is impossible to accumulate the amount of the funds necessary to pay old-age pensions, must, while reducing old-age pensions, provide for such a mechanism for compensating, for the incurred losses, the persons to whom such pensions were granted and paid whereby, after the said extreme situation is over, the state would undertake the obligation to compensate such persons, within a reasonable time and in a fair manner, for the losses incurred due to the reduction of old-age pensions; these provisions are *mutatis mutandis* also applicable with regard to compensation for the losses that are incurred due to the reduction of disability pensions.

In the acts of the Constitutional Court, it has also been held that the modification of the legal regulation by means of which state pensions are reduced to a great extent due to the fact that, upon the emergence of an extreme situation (economic crisis etc.), the economic and financial situation changes in such a way that the accumulation of the funds necessary to pay state pensions is not secured is an essential amendment to the legal regulation of these pensions; thus, the legislature, upon the emergence of an extreme situation

where, *inter alia*, due to an economic crisis, it is impossible to accumulate the amount of the funds necessary to pay state pensions, must, while reducing state pensions to a large extent, provide for such a mechanism for compensating, for the incurred losses, the persons to whom such pensions were granted and paid whereby, after the said extreme situation is over, the state would undertake the obligation to compensate such persons, in a fair manner and within a reasonable time, for the losses incurred by them due to the reduction of state pensions; the particularities of state pensions also imply that the losses incurred due to the reduction of state pensions may be compensated to the extent that is lower than in the event of the losses incurred due to the reduction of old-age or disability pensions (decision of 20 April 2010 and the ruling of 29 June 2010).

In this context, it needs to be emphasised that, while seeking to ensure that losses incurred due to the reduction of old-age or disability pensions, as well as the reduction of state pensions to a great extent, would be compensated within a reasonable time and in a fair manner after the said extreme situation is over, the legislature must, without unreasonable delay, by means of a law, establish such essential elements (grounds, amounts, etc.) of compensation for the reduced pensions on the basis of which it would be possible to draft the procedure for compensation for the reduced pensions.

It has been mentioned that reduced pensions may be paid only temporarily, i.e. only as long as there is an extreme situation (economic crisis, etc.) in the state, when there is an objective lack of the funds necessary for the payment of pensions.

In the Constitutional Court's decision of 20 April 2010, it has been held that the constitutional concept of the state budget, *inter alia*, the constitutional institution of a budget year implies that when there is an extreme situation in the state (economic crisis etc.) due to which the economic and financial situation in the state changes in such a way that, *inter alia*, the accumulation of the funds necessary for the payment of pensions is not secured and, due to this, the legal regulation has to be modified by reducing pensions, the reduction of pensions is allowed for no longer than one budget year; the constitutional institution of a budget year gives rise to the duty of the legislature, in the course of deliberating and approving the state budget for the next year, to reassess the actual economic and financial situation in the state and to decide whether the said situation is still a particularly difficult one, *inter alia*, whether the collection of the state budget revenue is still disordered to the extent that, due to this, the state is unable to perform the undertaken obligations and whether, due to this, it is necessary to establish such a legal regulation whereby the reduced pensions would have to be paid also for the next budget year.

The discretion of the legislature to choose a model of the system of old-age pensions, *inter alia*, where such a model is based on the accumulation of funds designated for future old-age pensions in special pension funds; regulating the economic activity of economic operators administering pension funds (Articles 46 and 52 of the Constitution)

The Constitutional Court's ruling of 29 June 2012

... while making use of the discretion to choose a system of pensions, the legislature may establish various models of the system of old-age pensions, which are guaranteed in Article 52 of the Constitution, *inter alia*, those based upon the collection of the funds necessary to pay old-age pensions from the income of working persons at that time, or based upon the accumulation of funds designated for future old-age pensions in special pension funds, as well as based upon the combination of these models. While establishing a model of the system of old-age pensions by means of a law, the legislature must comply with the requirements arising from Article 52 of the Constitution, the constitutional imperative of social harmony, the principles of justice, reasonableness, and proportionality.

Having chosen such a model of the system of old-age pensions where the funds (or part thereof) designated for old-age pensions are accumulated in special pension funds administered by state or private economic operators, the legislature must also pay regard to the provisions of Paragraphs 2 and 3 of Article 46 of the Constitution, whereby the state supports economic efforts and initiative that are useful to society and regulates economic activity so that it serves the general welfare of the nation. As it has been

held by the Constitutional Court on more than one occasion, while regulating economic activity, the state must follow the principle of balancing the interests of a person and society and must guarantee the interests of both a private person (economic operator) and society; as a rule, the regulation of economic activity is linked with the establishment of conditions for economic activity, the regulation of certain procedures, control over economic activity, as well as with certain limitations and prohibitions on this activity (*inter alia*, the rulings of 13 May 2005, 6 January 2011, and 21 June 2011).

In this context, it needs to be noted that, if the legislature, while carrying out the constitutional obligation to guarantee the right of a person to an old-age pension, provides that an old-age pension (or part thereof) is accumulated in special funds administered by state or private economic operators, the imperatives consolidated in Articles 46 and 52 of the Constitution give rise to the duty of the legislature to regulate the economic activity of these operators so that the interests of a person (economic operator) and society would be balanced: *inter alia*, it is necessary to establish the licencing and control of this activity, limitations upon administering the funds (*inter alia*, the investing thereof) transferred to pension funds, conditions for paying pension benefits, and other necessary conditions of the economic activity of economic operators administering pension funds.

The right to funds accumulated in pension funds is related to the protection of the rights of ownership

The Constitutional Court's ruling of 29 June 2012

... even though the funds designated for old-age pensions and accumulated in pension funds may not be identified with cumulative pensions themselves (with payable benefits), the amount of which depends on the results of the economic activity (*inter alia*, investing) of the economic operators administering particular pension funds, the right of a person to funds already accumulated in these funds must be related to the protection of the rights of ownership, and the property aspects of this right are protected under Article 23 of the Constitution.

The powers of the legislature, upon the emergence of a particularly difficult economic and financial situation in the state, to reduce the part of funds that is transferred to pension funds in order to accumulate future old-age pensions

The Constitutional Court's ruling of 29 June 2012

... the legislature, having established that a certain part of the funds designated for old-age pensions is transferred to special pension funds in order to accumulate future old-age pensions, in the event of necessity (e.g. during an economic crisis etc.), when the economic and financial situation of the state changes in a such way that, *inter alia*, the collection of the funds necessary to pay old-age pensions is not ensured from the income of persons working at that time, has the powers, *inter alia*, to decide to temporarily reduce such part of the funds collected from the said income that is transferred to special pension funds in order to accumulate future old-age pensions; however, in doing so, the legislature must follow the imperatives arising from the Constitution, *inter alia*, the requirements of justice, reasonableness, proportionality, and the equality of rights.

[...]

Thus, when there is a particularly difficult economic and financial situation in the state and in order to secure the vitally important interests of society and the state, as well as to protect other constitutional values, in cases where it is necessary to reduce the part of funds that is transferred to special pension funds and is designated for the accumulation of old-age pensions (or part thereof), the legislature may establish only such extent of the reduction that is necessary in order to reach the aforesaid objectives and that would not deny the essence of a cumulative pension.

[...]

In the jurisprudence of the Constitutional Court, it has ... been noted that the state must also observe the constitutional principles of legal certainty and the protection of legitimate expectations in the

relationships connected with pension provision; therefore, amendments to the established legal regulation that worsen pension provision are possible only when there arises an extreme situation (economic crisis, a natural disaster, etc.) in the state and when there is an objective lack of funds for the fulfilment of state functions and the satisfying of public interests, as well as the payment of pensions; such amendments must be necessary for the protection of other constitutional values, they must be done only by means of a law and without violating the Constitution (rulings of 23 April 2002, 4 July 2003, and 3 December 2003).

It needs to be noted that the amount of funds that are transferred to special pension funds and are designated for the accumulation of old-age pensions (or part thereof) is one of the preconditions for achieving good results of the economic activity (*inter alia*, investment) of the economic operators administering these funds; therefore, if the legislature, in the event of necessity (e.g. upon the emergence of an economic crisis), decides to reduce this amount, it not only must not deny the essence of a cumulative pension, but also must seek to achieve a situation where persons that have accumulated this pension would not sustain great losses; whereas in cases where such losses are unavoidable, the legislature must, while taking into account, *inter alia*, the financial and economic capacities of the state, establish fair compensation for such losses; various ways of such compensation may be chosen.

Reorganising the system of pension provision (*inter alia*, upon the emergence of a particularly difficult economic and financial situation in the state)

The Constitutional Court's ruling of 29 June 2012

The Constitutional Court has held that the system of pension provision established by means of a law may be subject to reorganisation (*inter alia*, the ruling of 4 July 2003, the decision of 20 April 2010, and the ruling of 14 December 2010). While reorganising this system, the Constitution must be observed in every case; the system of pensions may be reorganised only by means of a law, only guaranteeing the old-age and disability pensions provided for by the Constitution, as well as observing the obligations undertaken by the state, where such obligations are not in conflict with the Constitution, to pay the respective benefits to persons who meet the requirements established by means of a law (*inter alia*, the rulings of 4 July 2003, 3 December 2003, and 24 December 2008 and the decision of 20 April 2010). The Constitutional Court has also noted that, if, in the course of reorganising the system of social guarantees or the structure of individual social guarantees, the amount of social guarantees is reduced, let alone certain social guarantees disappear, a mechanism of fair compensation for the incurred losses must be established for the individuals to whom those social guarantees were reasonably established (*inter alia*, the rulings of 22 November 2007 and 2 September 2009).

In the Constitutional Court's decision of 20 April 2010, it was held that, even when, due to special circumstances (economic crisis etc.), there is an extremely difficult economic and financial situation in the state, the legislature, if it decides to reorganise the system of pensions in such a manner that the pensions established by means of a law, but not directly specified in Article 52 of the Constitution, would be eliminated or the legal regulation of these pensions would be amended in essence must establish a fair mechanism for compensating, for the incurred losses, the persons who were granted and paid such pensions.

... it needs to be noted that the legislature, upon the emergence of a particularly difficult economic and financial situation in the state due to special circumstances (economic crisis etc.), if it decides to reorganise the system of old-age pensions in such a manner that the legal regulation on collecting the funds designated for old-age pensions and on paying such pensions would undergo essential changes, *inter alia*, in such a way that the funds designated for old-age pensions or part thereof would no longer be accumulated in special pension funds, must seek to achieve a situation where the participants of the pension system would not sustain losses. If, in the course of reorganising the system of old-age pensions the losses sustained by its participants, especially when such losses are essential, are unavoidable, the legislature must establish fair compensation for such losses.

The legal regulation governing social assistance relationships in the event of unemployment (Article 52 of the Constitution)

The Constitutional Court's ruling of 7 February 2013

... Article 52 of the Constitution, which, *inter alia*, lays down the grounds for social assistance, must be interpreted together with Paragraph 1 of Article 48 of the Constitution, whereby everyone has the right, *inter alia*, to receive social security in the event of unemployment, with the constitutional principle of a state under the rule of law, as well as with other related norms and principles of the Constitution.

When interpreting the duty of the state to guarantee the right of every individual, *inter alia*, to social security in the event of unemployment, which is consolidated in Paragraph 1 of Article 48 of the Constitution, the Constitutional Court has held that, if, due to certain reasons, a person loses his/her employment and cannot take care of his/her welfare, the duty arises for the state to establish such a legal regulation under which social assistance would be ensured for such a person in the event of unemployment. The legislature may choose and consolidate in laws a model for the provision of the said support, *inter alia*, various forms thereof; however, the legislature must not establish any such a legal regulation that would create the preconditions for the emergence of such a situation where persons who, due to certain reasons, have lost their employment would not receive adequate social assistance (ruling of 24 December 2008).

[...]

... the constitutional principle of social solidarity also implies that the legislature, when taking into account, *inter alia*, the mission of social assistance in the event of unemployment and the financial capacities of the state and society, may establish such a legal regulation whereby persons who receive different social welfare according to laws, where the said social welfare is rendered by the state in a financial form (*inter alia*, a disability pension) and where such social welfare is capable of ensuring the conditions of living in line with human dignity, would be provided with social security not in the form of financial assistance, but in a different form in the event of unemployment.

The purpose of social insurance (Article 52 of the Constitution)

The Constitutional Court's ruling of 15 February 2013

The Constitutional Court has ... held that the purpose of social insurance is to provide persons with funds and services necessary for living if, for reasons established by means of a law, they are unable to subsist on their earned income or other income or, for valid reasons established by means of a law, they have additional expenses (ruling of 12 March 1997). The purpose of the designed social insurance system is not only to pay social insurance pensions and allowances, but, first of all, to collect all funds provided for by means of a law (ruling of 12 March 1997). The provisions of Article 52 of the Constitution, which guarantee the right of citizens to pension provision and social assistance, imply the duty of the legislature to establish such a legal regulation that would create the preconditions for the state to implement its constitutional obligation to guarantee the right of citizens to social security, would ensure the accumulation of funds that are necessary for pensions and social assistance, and would ensure the payment of these pensions and the rendering of social assistance (*inter alia*, the rulings of 13 December 2004 and 22 October 2007 and the decision of 20 April 2010). Otherwise, the duty of the state to establish sufficient measures for the implementation and legal defence of the rights consolidated in the Constitution would not be realised (ruling of 3 December 2003).

The legal regulation should create the preconditions for distributing among members of society (of course, by taking account of, *inter alia*, the constitutional principle of solidarity, the constitutional imperatives of social harmony and justice) the burden that falls upon the state; however, the said burden must be distributed in such a manner that the fulfilment of the duty to pay state social insurance contributions would not become an overly heavy burden and a person, due to the fact that he/she is fulfilling this duty, would not become in need of social assistance himself/herself (rulings of 26 September 2007 and 22 October 2007). When establishing the duty for working persons (those who pursue active economic activities) to pay state social insurance contributions, various conditions are possible, which determine the

emergence of this duty; in addition, various criteria defining these conditions are also possible. It is also possible to relate the payment of state social insurance contributions with the fact that a person receives insured income and it is possible to establish, by means of a law, the minimum amount of such income (ruling of 26 September 2007).

The state pensions of officials and servicemen

The Constitutional Court's ruling of 22 February 2013

In its ruling of 24 December 2008, the Constitutional Court noted that the purpose of the state pension of officials and servicemen, which is consolidated in [the law] is, *inter alia*, to compensate for difficult, responsible, often risk-involving, and dangerous service for the state; the particularities of state pensions permit the legislature, taking account of all significant circumstances and having regard to the norms and principles of the Constitution, to establish the respective conditions for granting these pensions; the receipt of these pensions is related to the particular status of a certain person (his/her service, merit, or other circumstances upon which the granting of a state pension depends).

When consideration is given to such a concept of the state pensions of officials and servicemen ... it needs to be noted that, after such a state pension has been established by means of a law, the granting and receipt of this pension must specifically be related to service performed by a person to the State of Lithuania. In this context, it needs to be emphasised that service to another state, *inter alia*, the USSR (including the Lithuanian SSR), may not be considered service to the State of Lithuania. However, under the Constitution, the legislature has the discretion, while taking account of significant circumstances, to establish such a legal regulation of granting the state pensions of officials and servicemen under which the period of service to another state may be compared with a certain part of the period of service of a person to the State of Lithuania necessary in order to grant this pension in cases where the said service was performed under the circumstances when it was objectively impossible to perform service to the State of Lithuania (*inter alia*, during the period prior to the restoration of the independence of the Republic of Lithuania on 11 March 1990, when the only institutions of the State of Lithuania were the Republic of Lithuania's diplomatic missions and consular posts abroad or when the service to the State of Lithuania was possible only in the structures (*inter alia*, in the Lithuanian Freedom Fight Movement) of the organised armed resistance against the occupation, which took place for a certain time on the occupied territory of the Republic of Lithuania). While implementing this discretion, the legislature is bound by the aforementioned purpose of the state pension of officials and servicemen. Thus, the legislature may not establish such a legal regulation under which the state pensions of officials and servicemen would be granted to persons who did not serve to the State of Lithuania or to persons who, while doing service to the state that had occupied the territory of the Republic of Lithuania, participated in suppressing the resistance against the occupation or in committing criminal acts against the Lithuanian population.

The right to social assistance in the event of unemployment (Article 52 of the Constitution)

The Constitutional Court's ruling of 14 February 2014

Under the Constitution, *inter alia*, Article 52 thereof, the legislature, when regulating the relationships of social assistance in the event of unemployment, which is one of the types of social assistance, must establish such a legal regulation that would ensure that persons who, due to certain reasons, have lost their employment, would receive adequate social assistance; the same legal regulation must, *inter alia*, also establish certain sufficient measures for the implementation of the right to social assistance in the event of unemployment. The legal regulation governing social assistance in the event of unemployment must, among other things, create the preconditions for all members of society who have, due to certain reasons, lost their employment to take care of their own welfare by themselves rather than to rely solely on state social security.

Under the Constitution, *inter alia*, Article 52 thereof, and the constitutional principle of a state under the rule of law, after establishing, by means of a law, the legal regulation governing social assistance in the

event of unemployment, *inter alia*, the grounds and conditions for granting social assistance in the event of unemployment, the legislature may assign another subject (*inter alia*, the Government) to establish, by means of a statutory legal act and based on the relevant law, the procedure for granting social assistance in the event of unemployment, as well as for paying the respective benefits granted on the grounds and under the conditions established by the relevant law in the event of unemployment. When the procedure for paying the respective benefit in the event of unemployment is established by means of a statutory legal act (including a resolution of the Government), regard must be paid to the requirements stemming from the Constitution, *inter alia*, Article 52 thereof, as well as from the constitutional principle of a state under the rule of law; among other things, the said legal regulation may create no preconditions for the emergence of any such situations where the implementation of the right to receive social assistance in the event of unemployment would be disproportionately burdened.

The duty of the state to fairly compensate for losses incurred as a result of the reduction of old-age pensions; the powers of the legislature to establish a mechanism for such compensation

The Constitutional Court's decision of 7 March 2014

In [the Constitutional Court's ruling of 6 February 2012], *inter alia*, it was held:

"... the modification of the legal regulation by reducing old-age pensions even due to the fact that there is an extreme situation (economic crisis etc.) in the state means a limitation on the constitutional social guarantee of a person – an old-age pension; such a legal regulation limits, to a certain extent, the right of ownership of a person to whom an old-age pension was granted and paid; thus, the legislature, upon the emergence of an extreme situation, when, *inter alia*, due to an economic crisis, it is impossible to accumulate the amount of the funds necessary to pay old-age pensions, must, while reducing old-age pensions, provide for such a mechanism for compensating, for the incurred losses, the persons to whom such pensions were granted and paid whereby, after the said extreme situation is over, the state would undertake the obligation to such persons to compensate them, within a reasonable time and in a fair manner, for the losses incurred due to the reduction of old-age pensions ...

In this context, it needs to be emphasised that, while seeking to ensure that losses incurred due to the reduction of old-age or disability pensions, as well as the reduction of state pensions to a great extent, would be compensated within a reasonable time and in a fair manner after the said extreme situation is over, the legislature must, without unreasonable delay, by means of a law, establish such essential elements (grounds, amounts, etc.) of compensation for the reduced pensions on the basis of which it would be possible to draft the procedure for compensation for the reduced pensions."

[...]

It should be noted that the cited provisions of the official constitutional doctrine imply, *inter alia*, that:

- under the Constitution, *inter alia*, Articles 23 and 52 thereof, the duty stems for the state to compensate, in a fair manner, all persons whose old-age pensions were reduced due to an extreme situation (economic crisis etc.) in the state for the losses incurred by them;
- the aforementioned losses must be compensated for within a reasonable time after the extreme situation is over in the state by following a legal act (law) that is adopted by the legislature, without unreasonable delay, and that provides for a mechanism for compensation for the said losses;
- the wording "without unreasonable delay", *inter alia*, means that this mechanism for compensation must be established after the extreme situation is over in the state when the preconditions arise for assessing, according to objective data (economic indicators, *inter alia*, indicators of economic growth, funds accumulated by the state), the respective capacities of the state to ensure compensation for the losses incurred after the reduction of old-age pensions.

Consequently, a special legal act (law) that establishes the amounts, terms, and other essential elements of compensation for all persons for the losses incurred by them after the reduction of old-age pensions must be adopted immediately after the extreme situation is over in the state and after the preconditions arise for assessing, according to objective data (economic indicators, *inter alia*, indicators of

economic growth, funds accumulated by the state), the respective capacities of the state to ensure compensation for the said losses.

[...]

It should be noted that, under the Constitution, *inter alia*, under the constitutional imperative of social harmony stemming from it, fair compensation to all persons whose old-age pensions were reduced (*inter alia*, by means of the provisions of a law that are declared in conflict with the Constitution) due to an extreme situation (economic crisis etc.) in the state for the losses incurred may be ensured as appropriate only by invoking the amounts, terms, and other essential elements of compensation for the losses incurred, as established by the legislature.

It should also be noted that fair compensation for the losses incurred must be ensured as appropriate (according to the capacities of the state) while taking account of the losses that were incurred after old-age pensions were reduced by means of: the provisions of a law that are declared in conflict with the Constitution (these losses must be fully compensated for); and the provisions of a law that are declared not in conflict with the Constitution (these losses must be compensated for, according to the capacities of the state, in a fair manner, but not necessarily fully).

[...]

It should be noted that the legislature, when it establishes a mechanism for compensation for the losses incurred due to the reduction of old-age pensions, *inter alia*, the starting date of the payment of compensation and a reasonable period of time during which the said losses will be compensated for, is bound by the Constitution, *inter alia*, the constitutional imperative of reasonableness stemming from it; thus, the legislature must take account, *inter alia*, of the consequences of an extreme situation and the capacities of the state.

In this context, it should also be noted that the capacities of the state are determined, *inter alia*, by various obligations assumed by the state, which, *inter alia*, are related to financial discipline, thus, also to the imperative of balancing the revenue and expenditure of the state budget.

Social assistance in the event of widowhood (Article 52 of the Constitution)

The Constitutional Court's ruling of 3 July 2014

One of the types of social assistance guaranteed by the state, as *expressis verbis* indicated in Article 52 of the Constitution, is social assistance in the event of widowhood. Thus, under this article of the Constitution, the state is constitutionally obliged to provide social assistance in the event of widowhood, i.e. to partly compensate for the family income lost by a person as a result of the death of his/her wife (husband). The provision of this social assistance is guaranteed to a widow(er), i.e. a person who was the wife (husband) of the deceased person at the time of the death of the latter.

The Constitution does not lay down any grounds and conditions for providing social assistance in the event of widowhood, nor any duration and amounts of this social assistance – this must be established by the legislature; however, the legislature is bound by the norms and principles of the Constitution (*inter alia*, the constitutional principles of social solidarity, social harmony, justice, reasonableness, proportionality, and the equality of rights), as well as by the capacities of the state and society.

[...]

... the mere fact that a person is the widow(er) of a person who had belonged to a group of persons with a certain social status (distinction of which is objectively justified) and who, by virtue of that status, had acquired the right to receive social assistance (pension) is not in itself a ground to objectively justify any such a legal regulation that would consolidate the right of the said widow(er) to receive in the event of widowhood such social assistance (pension) that would, in substance, differ from that ensured for the widow(er)s of other persons; the deceased person's social status alone is not in itself a constitutionally justifiable ground to ensure for the widow(er) of that person social assistance of a much larger amount than that ensured for other widow(er)s.

... if such a legal regulation were established under which, on the grounds of the mere fact of becoming the widow(er) of a person who had belonged to a group of persons with a certain social status (distinction

of which is objectively justifiable) and who, by virtue of that status, had acquired the right to receive social assistance (pension), the said widow(er) were granted the right to receive such social assistance (pension) that would, in substance, differ from that ensured for the widow(er)s of other persons, that legal regulation should be judged as consolidating a privilege on the grounds of the social status of the person.

[...]

... the fact that, under the Constitution, it is not permitted to establish any such a legal regulation under which, in the event of widowhood, social assistance (pension) of a certain amount would be provided for certain persons merely on the grounds that they are the widow(er)s of the persons who had belonged to a group of persons with a certain social status (whose distinction is objectively justified) and who, by virtue of that status, had acquired the right to receive social assistance (pension), does not mean that it is on the whole not permitted to establish social assistance of different amounts in the event of widowhood.

In view of the fact that, as mentioned before, social assistance provided in the event of widowhood partly compensates for the family income lost by a person as a result of the death of his/her wife/husband, under the Constitution, a ground for establishing different amounts of social assistance provided in the event of widowhood would be the amount of family income lost by a person as a result of the death of his/her wife/husband. However, when establishing different amounts of social assistance provided in the event of widowhood, the legislature must pay regard to the capacities of the state and society and not violate the constitutional imperatives of justice, reasonableness, proportionality, and social harmony.

The powers of the legislature to modify the legal regulation of pensions upon the emergence of a particularly difficult economic and financial situation in the state

The Constitutional Court's ruling of 14 May 2015

... under the Constitution, *inter alia*, Article 52 thereof, and, according to the constitutional principles of a state under the rule of law, the equality of the rights of persons, justice, and proportionality:

– upon the emergence of an especially difficult economic and financial situation in the state, if the state pensions (as regards their nature and character, they are different from old-age and disability pensions) are reduced to a greater extent than old-age and disability pensions, *inter alia*, a longer term of paying the reduced state pensions may be established;

– the constitutional duty of the state to accumulate the funds necessary to pay pensions and to repeal the legal regulation by which such pensions were reduced if the possibility arises to accumulate (receive) the funds necessary for paying pensions in the amounts before the reduction thereof may not be understood as the duty to decide on repealing the legal regulation by which pensions were reduced only when the possibility arises to accumulate (receive) all funds necessary for restoring the amounts of all pensions that had existed before the reduction; if the possibility arises to accumulate (receive) a certain part of such funds, the legislature, by taking account of the economic and financial situation existing in the state and of the capacities of the state, as well as of various obligations undertaken by the state, when taking a decision on repealing the legal regulation reducing the pensions, may decide to restore, not necessarily at the same time and not necessarily to the full extent, the previous amounts of pensions that are of different nature and different character; if it makes such a decision, the legislature is bound by the Constitution, *inter alia*, by the requirements arising from the constitutional principles of a state under the rule of law, the equality of the rights of persons, justice, and proportionality, including the requirement that, in the course of establishing a different legal regulation, account should be taken of concrete legal circumstances and an assessment must first be made of the differences of the legal situation of persons and objects to which such different legal regulation is applied.

The legal regulation governing social security relationships, *inter alia*, social assistance relationships (Article 52 of the Constitution)

The Constitutional Court's ruling of 26 May 2015

Article 52 of the Constitution prescribes: "The State shall guarantee its citizens the right to receive old-age and disability pensions, as well as social assistance in the event of unemployment, sickness, widowhood, the loss of the breadwinner, and in other cases provided for by law."

The Constitutional Court has formulated in its acts an extensive official constitutional doctrine of social security, *inter alia*, social assistance, and has revealed the constitutional imperatives that should be complied with in regulating the respective relationships by means of legal acts.

The Constitutional Court has held on more than one occasion that the provisions of Article 52 of the Constitution express the social orientation (social character) of the state and recognise that social provision, i.e. the contribution of society to the maintenance of those its members who, due to important reasons specified under the law, are unable to support themselves through work or other income, or are insufficiently provided for, has the status of a constitutional value; the measures of social security express the idea of social solidarity and help persons to protect themselves from possible social risks (*inter alia*, the rulings of 14 December 2010 and 14 April 2014).

The Constitutional Court has noted that the principle of solidarity in civil society does not deny personal responsibility for one's own fate; therefore, the legal regulation of social security should be such that would create the preconditions and incentives for every member of society to take care of one's own welfare, but not to rely solely on the social security guaranteed by the state (*inter alia*, the rulings of 25 November 2002, 2 September 2009, and 3 July 2014); social assistance must not create any preconditions for a person not to seek higher income and not to search, by one's own efforts, the possibilities of ensuring for oneself and one's own family the living conditions that are in line with human dignity; social assistance must not become a privilege (*inter alia*, the rulings of 2 September 2009 and 3 July 2014); the recognition of mutual responsibility of a person and society is important in ensuring social harmony, guaranteeing freedom of a person and the possibility of protecting oneself from difficulties that could not be overcome by the person alone (*inter alia*, the rulings of 12 March 1997, 6 February 2012, and 27 February 2012). Thus, under the Constitution, the legislature is under the duty to establish, by means of a law, such grounds or conditions for rendering social assistance, as well as such types and amount of social assistance, that would create the preconditions and incentives to encourage the attempts of each person to take care of one's own or one's family welfare by one's own efforts first of all and to contribute to the welfare of all society (ruling of 7 February 2013).

In addition, it needs to be noted that the jurisprudence of the Constitutional Court defends the legal position that the social orientation of the state implies the discretion of the legislature to establish exceptions to the general legal regulation based on social solidarity and apply them to certain groups of socially most sensitive persons who need specific social assistance (rulings of 6 February 2012 and 16 May 2013).

The Constitutional Court has noted on more than one occasion that the legislature, while having regard to the Constitution, in regulating the relationships of social security and social assistance, has broad discretion (*inter alia*, the rulings of 29 June 2012 and 15 February 2013) and that, under the Constitution, a law may also provide for other pensions and social assistance in addition to those *expressis verbis* indicated in Article 52 of the Constitution (*inter alia*, the rulings of 4 July 2003 and 6 February 2012).

Article 52 of the Constitution, the striving for an open, just, and harmonious civil society and a state under the rule of law, as established in the Preamble to the Constitution, and the constitutional principles of the social orientation and social solidarity of the state imply that the content of the legal regulation of social assistance relationships may be determined by various factors, *inter alia*, by the resources and the material and financial possibilities of the state and society, the need to ensure the financial stability, economic sustainability, and development of the state; the legislature, taking account of these factors and correspondingly regulating the said relationships, has broad discretion to choose and consolidate, by means of a law the types of social assistance; in the situations where a person, according to laws, meets the

requirements in order to receive the social assistance of several types, the legislature, taking account, *inter alia*, of the purpose of social assistance and the financial possibilities of the state and society, may establish the conditions under which this assistance will be rendered (ruling of 7 February 2013). In itself, the constitutional status of social rights does not deny the right of the legislature to establish certain conditions for or limitations on the emergence of the aforesaid rights (rulings of 6 May 1998 and 7 February 2013).

[...]

In interpreting Article 52 of the Constitution, the Constitutional Court has held that the regulation of the relationships of social assistance by means of a law is one of the most important guarantees of the constitutional right to social assistance (rulings of 5 March 2004 and 7 February 2005). The phrase “the state shall guarantee” of Article 52 of the Constitution means, *inter alia*, that various types of social assistance are guaranteed for the persons on the grounds and in the amounts that are established in laws (*inter alia*, the rulings of 23 April 2002 and 6 February 2012). Separate types of social assistance, the persons who are granted social assistance, the grounds and conditions for granting and paying social assistance, and the amounts thereof may be established exclusively by means of a law (*inter alia*, the rulings of 5 March 2004 and 14 April 2014).

A statutory legal regulation governing the relationships of social security and social assistance may comprise the establishment of the respective procedures; it may also comprise such a legal regulation where, based on a law, the need to provide more details about and particularise in statutory legal acts a certain legal regulation established by means of a law is objectively caused by the necessity in the law-making process to draw on expert knowledge of a certain area or special (professional) competence (*inter alia*, the rulings of 7 February 2005, 14 December 2010, 31 October 2012, and 14 February 2014). No statutory legal regulation may establish any conditions for the emergence of the right of an individual to social assistance, nor may it limit the scope of this right (*inter alia*, the rulings of 7 February 2005, 2 September 2009, 14 December 2010, and 14 February 2012).

The link between the duty of the state to provide social assistance and its obligation to protect and defend human dignity; social assistance in helping persons lacking access to housing to obtain such access (Articles 21 and 52 of the Constitution)

The Constitutional Court’s ruling of 26 May 2015

The Constitutional Court has noted that the state must create such a system of social provision that would make it possible to maintain the living conditions in line with the dignity of a person and, in the event of need, it would render the necessary social assistance to a person (*inter alia*, the rulings of 26 September 2007 and 3 July 2014). In interpreting the provisions of Article 21 of the Constitution that consolidate the protection and defence of human dignity, the Constitutional Court has held that dignity is an integral characteristic of an individual as the greatest social value; every member of society has innate dignity; the fact that the legislature, while regulating the relationships connected with the implementation of human rights and freedoms, must guarantee their proper protection constitutes one of the conditions for ensuring human dignity as a constitutional value (rulings of 29 December 2004 and 2 September 2009).

Thus, it is impossible to interpret the duty of the state to render the social assistance provided for in laws, as consolidated in Article 52 of the Constitution, separately from, *inter alia*, the obligation of the state to protect and defend human dignity, as consolidated in Article 21 of the Constitution. ... the imperative of the protection and defence of human dignity as a special constitutional value, as consolidated in Article 21 of the Constitution, and the social orientation of the state give rise to the duty of the state, by taking account to the capacities of the state and society, to help persons lacking access to housing, who are unable to obtain such access through work and/or other income, to obtain access to a home meeting at least the socially acceptable minimum needs. While regulating the relationships of social assistance for such persons in obtaining access to housing, the legislature has broad discretion in choosing the forms of rendering such assistance, *inter alia*, it can provide for financial assistance for acquiring or renting a

residential property, it can provide for granting access to state-owned or state-leased housing, etc. It needs to be emphasised that the social orientation of the state also implies the duty of the legislature, when it regulates these relationships, to create the preconditions for taking into consideration the needs of certain groups of socially most sensitive persons who need specific social assistance.

... under the Constitution, the legislature, while regulating the relationships of social assistance in helping persons lacking access to housing to obtain such access, must define the persons who are unable to obtain access to housing through work and/or other income and who, due to this reason, are rendered state assistance in obtaining access to housing. The legislature must also define the grounds and conditions for rendering such assistance and amounts thereof. In the event that the legislature links the rendering of state assistance in obtaining access to housing with the sizes of the property or income of persons (families), such sizes may be relative, i.e. they may be linked with the sizes established by the Government or another competent institution by taking account of certain economic indicators.

After establishing that the rendering of state assistance in obtaining access to housing is linked with the sizes of the property or income of persons (families), the legislature must define the level of the property or income of persons (families) upon reaching which the rendering of such assistance is discontinued. When defining such a level, regard should be paid to the norms and principles of the Constitution, *inter alia*, to the state obligation to protect and defend human dignity, as consolidated in Article 21 thereof, and the constitutional principle of a state under the rule of law (*inter alia*, regard should be paid to the constitutional requirements for justice and proportionality) that determine the fact that the rendering of such assistance may not be discontinued if particular persons (families) are unable to obtain access to a home meeting at least the socially acceptable minimum needs.

State pensions

The Constitutional Court's ruling of 26 November 2015

... while implementing its discretion deriving from the Constitution to establish the conditions for granting and paying state pensions, the legislature may stipulate that persons who meet the conditions established in the law for receiving several state pensions must be paid only one of these pensions; in addition, taking into consideration the economic capacities of the state and other important circumstances and having regard to the constitutional imperative of social harmony, the principles of justice, reasonableness, and proportionality, as well as other norms and principles of the Constitution, the legislature may establish individual constitutionally justified situations where persons may be paid more than one state pension.

The right to social assistance in the event of unemployment (Paragraph 1 of Article 48 and Article 52 of the Constitution)

The Constitutional Court's ruling of 31 October 2019

In its ruling of 7 February 2013, the Constitutional Court noted that Article 52 of the Constitution, which, *inter alia*, lays down the grounds for social assistance, should be interpreted in conjunction with Paragraph 1 of Article 48 of the Constitution, which stipulates: "Everyone ... shall have the right ... to receive ... social security in the event of unemployment."

... Paragraph 1 of Article 48 of the Constitution consolidates, *inter alia*, the right of every person to receive social security in the event of unemployment, which includes, *inter alia*, the right to receive social assistance, guaranteed by the state under Article 52 of the Constitution.

Interpreting Article 52 of the Constitution in conjunction with Paragraph 1 of Article 48 of the Constitution, the Constitutional Court has held the following:

– if, due to certain reasons, a person loses his/her job and cannot take care of his/her welfare, the duty arises for the state to establish such a legal regulation under which social assistance would be ensured for such a person in the event of unemployment; the legislature may choose and consolidate, in laws, a model for the provision of the said assistance; however, the legislature must not establish any such a legal regulation that would create the preconditions for the emergence of such a situation where persons who,

due to certain reasons, have lost their employment would not receive the respective social assistance (*inter alia*, the ruling of 7 February 2013 and the decision of 10 January 2019);

– the principle of social solidarity, which is consolidated in the Constitution, does not deny personal responsibility for one’s own fate; therefore, the legal regulation of social security should be such that would create the preconditions and incentives for all members of society to take care of their own welfare by themselves rather than to rely solely on social security guaranteed by the state (*inter alia*, the rulings of 6 February 2012, 7 February 2013, and 26 May 2015);

– social assistance must not become a privilege; it must not create any preconditions for a person, by one’s own efforts, not to seek higher income or possibilities of ensuring, for oneself and one’s own family, the living conditions that are in line with human dignity (ruling of 7 February 2013).

[...]

... under the Constitution, *inter alia*, the provision of Article 52 thereof that the state guarantees its citizens the right to receive social assistance in the event of unemployment, the legislature has discretion to choose and establish, in laws, a model of this social assistance, *inter alia*, the grounds and conditions for its provision. Having chosen a model based on unemployment social insurance for the provision of social assistance in the event of unemployment, the legislature must ensure that the constitutional right, consolidated, as mentioned before, in Paragraph 1 of Article 48 and Article 52 of the Constitution, to social assistance in the event of unemployment is effectively ensured for persons, if they have contributed to this social insurance to the extent prescribed by means of a law, in cases where these persons lose employment but are actively seeking it and are unable to find it due to objective reasons.

It should be emphasised that the Constitution, *inter alia*, Paragraph 1 of Article 48 and Article 52 thereof, gives rise to the requirement for the legislature to regulate the provision of social assistance in the event of unemployment in such a manner that persons, upon losing their employment, could not rely solely on social assistance guaranteed by the state, but the preconditions and incentives would be created for these persons for actively seeking employment and, at the same time, the state would contribute to ensuring the conditions in line with human dignity for the life of these persons and their families.

It should be noted that, when the provision of social assistance in the event of unemployment is regulated by means of a law, regard must be paid, *inter alia*, to the requirements implied by the constitutional principle of a state under the rule of law. This, among other things, means that, in regulating the provision of social assistance by means of a law, it is impermissible to prescribe that the exercise of the constitutional right to social assistance in the event of unemployment be subject to constitutionally unjustifiable conditions, which would create the preconditions for the situation to appear in which a person who has lost employment but is actively seeking it and is unable, due to objective reasons, to find it would not receive the respective social assistance.

[...]

... it would be constitutionally unjustifiable to establish such a condition whereby, upon losing employment, a person implementing the constitutional right to higher education and, at the same time, seeking to exercise the constitutional right to social assistance in the event of unemployment would be compelled to choose a particular form of studies at a higher education school, even though, upon choosing another form of studies, the person would equally be able to combine studies with professional and/or another type of employment.

The legal regulation of the grounds and conditions of pension accumulation

The Constitutional Court’s ruling of 10 February 2020

... in implementing the duty of the state, stemming from Article 52 of the Constitution, to guarantee the right of a person to an old-age pension and having chosen such a model of the system of old-age pensions that is based, *inter alia*, on the accumulation of funds or part thereof designated for future old-age pensions in special pension funds, the legislature must consolidate, in a law, the grounds and conditions for the participation in pension accumulation. While paying regard, *inter alia*, to the constitutional

principles of the social orientation and social solidarity of the state and the imperatives of social harmony and justice, under which the burden of social security falling on the state is distributed among all members of society, the legislature may establish such a legal regulation on the framework of the participation in pension accumulation that would create the preconditions and incentives for members of society to take care of their own welfare by themselves by participating in the accumulation of funds or part thereof designated for old-age pensions and, thus, to contribute to the welfare of all society. Having regard to the Constitution, *inter alia*, the imperatives of the equality of the rights of persons and non-discrimination, which stem from Article 29 of the Constitution, and taking account of various social, demographic, and economic factors, *inter alia*, the material and financial possibilities of the state, the legislature may also establish such a legal regulation that would create the incentives for a group of members of society of a certain age to take decisions as early as possible concerning the participation in the accumulation of funds or part thereof designated for old-age pensions so that the preconditions would be created for the accumulation of a significant part of funds designated for future old-age pensions and for ensuring the harmonious functioning of the whole old-age pension system.

... if the legislature, while carrying out the constitutional obligation to guarantee the right of a person to an old-age pension, establishes that an old-age pension or part thereof is accumulated in special pension funds administered by economic operators, the duty stems from Paragraph 3 of Article 46 of the Constitution for the legislature to regulate economic activity in the field of pension accumulation so that it serves the general welfare of the people. The economic activity of economic operators administering pension funds is linked to the implementation of one of the most important social rights of a person – the right to receive an old-age pension; therefore, this activity must be regulated and supervised by the state. Under the Constitution, *inter alia*, Articles 46 and 52 thereof, and the constitutional imperatives of social harmony and justice, in regulating economic activity in the field of pension accumulation, the legislature must balance the interests of a person and society, various constitutional values, among other things, social security, the protection of consumer interests, and freedom of individual economic activity and economic initiative, which also includes, *inter alia*, the freedom to conclude contracts.

The state pensions of scientists

The Constitutional Court's ruling of 3 June 2020

The Constitutional Court has held on more than one occasion that, under the Constitution, a law may also provide for other pensions in addition to those *expressis verbis* specified in Article 52 of the Constitution. ...

[...]

The Constitutional Court has noted that the state pension of scientists is also one of the types of pensions that are consolidated by means of a law and are not directly named in Article 52 of the Constitution; the purpose of this pension is, *inter alia*, compensation for scientific work whose duration is established by means of a law and which is significant to civil society and the State of Lithuania and requires special qualification (ruling of 14 May 2015). In this context, it should be mentioned that, under Paragraph 2 of Article 42 of the Constitution, the state supports, *inter alia*, science.

... the legislature, having established, under the Constitution, *inter alia*, Article 52 thereof, the state pension of scientists, has broad discretion, taking into account all significant circumstances, to establish, *inter alia*, the conditions for granting and paying this pension. However, in exercising this discretion, the legislature must respect the norms and principles of the Constitution, *inter alia*, the constitutional principles of the equality of the rights of persons and a state under the rule of law. Therefore ... it is not allowed to lay down a legal regulation that, in order to receive the state pension of scientists, would establish an unreasonably short length of scientific service for which the state pension of scientists is granted and paid or that, in another way, would violate, *inter alia*, the principles of justice, reasonableness, and proportionality. Failure to take into account the purpose of the state pension of scientists, the specific nature of scientific work, and other significant circumstances would make granting and paying such a pension a privilege and such pension provision could not be guaranteed under the Constitution.

... seeking that granting and paying the state pension of scientists would not become a privilege and having regard to the principles of justice, reasonableness, and proportionality, the legislature, under the Constitution, *inter alia*, Article 52 thereof, has the powers to establish such a legal regulation under which the state pension of scientists is not granted and not paid to persons as long as they are engaged in scientific work for which this state pension is granted and paid.

2.4.2.2. The right to healthcare

The legal regulation governing pharmaceutical activity (Paragraph 1 of Article 53 of the Constitution)

The Constitutional Court's ruling of 14 March 2002

The specific nature of medicines and medicinal substances as goods constitutes the fact that pharmaceutical activities are a special area of economic activity. It is in the interest of every individual, all society, and the state that laws and other legal acts would establish such a legal regulation whereby pharmaceutical activities would be conducted only by individuals who have specialist training and hold the respective qualification. The duty of the legislature to establish such a legal regulation arises out of Paragraph 1 of Article 53 of the Constitution, according to which the state takes care of the health of people.

[...]

... the provision "The State shall take care of the health of people" of Paragraph 1 of Article 53 of the Constitution implies that laws and other legal acts must establish such a legal regulation of pharmaceutical activities that would lay down the preconditions for creating a wide network of pharmacies, also that pharmacies would have sufficient stock of high quality, effective, and safe medicines, that the system of supply of medicines would operate smoothly, that the prices of medicines would be regulated, that the acquisition of medicines would not be inconvenienced, that the information about medicines and their use would be easily accessible and properly published, etc. Under the Constitution, pharmaceutical activities must be regulated in order that freedom of individual economic activity and initiative, as well as fair competition, would not be restricted. The state must exercise control so that pharmaceutical activities would be conducted for the sake of the health of people and public health promotion.

[...]

As such, the owner of an enterprise licensed for pharmaceutical activities (i.e. a pharmacy) may not be identified with pharmacists or other persons conducting pharmaceutical activities. As mentioned before, only the persons who have pharmaceutical education and who hold the necessary qualification may conduct pharmaceutical activities. Laws may also establish additional requirements for the persons linked with compounder, custody, control, and sale of medicines, which would ensure the protection of the health of people.

... A pharmacy is an enterprise licensed for pharmaceutical activities, i.e. activities that are part of public health activities and are related to goods of a specific nature – medicines and medicinal substances; therefore, laws may and must impose such limitations on the subjective rights of the owners of pharmacies that, in the pharmacies owned by them, only the individuals who have pharmaceutical education and hold the necessary qualification would be able to control the professional activities of the pharmacists working in such pharmacies, would be able to head such pharmacies, and would be able to conduct managerial control. Under the Constitution, laws must establish such a regulation of pharmaceutical activities in order that the economic interests of owners of pharmacies would not cast into the shade the activities of pharmacies conducted in the interest of the health of people and public health promotion.

... The requirements relating to pharmaceutical education and the necessary qualification must be imposed on persons conducting pharmaceutical activities in pharmacies. It is not permitted to impose requirements relating to education on such persons who wish to hold pharmacies by right of ownership.

The constitutional foundations of health protection (Paragraph 1 of Article 53 of the Constitution)

The Constitutional Court's ruling of 16 May 2013

The constitutional foundations of health protection are consolidated in Paragraph 1 of Article 53 of the Constitution that prescribes: "The State shall take care of the health of people and shall guarantee medical aid and services for a person in the event of sickness. The procedure for providing medical aid to citizens free of charge at state medical establishments shall be established by law."

The health of a person and of society is one of the most important values of society (*inter alia*, the rulings of 11 July 2002, 29 September 2005, and 21 June 2011). In interpreting the constitutional provision that the state takes care of the health of people, the Constitutional Court has held on more than one occasion that the protection of the health of people is a constitutionally important objective, a public interest; looking after the health of people is a state function (*inter alia*, the rulings of 26 January 2004, 29 September 2005, and 21 June 2011).

The provision of Paragraph 1 of Article 53 of the Constitution that the state takes care of the health of people expresses the constitutional principle that is also reflected from various aspects in other provisions of the Constitution (first of all, in those of the same paragraph, but also in those beyond that paragraph). All activity of the state related to the health of people must be based on the said principle.

The connections of the human right to the best possible health and the right to healthcare with other constitutional values

The Constitutional Court's ruling of 16 May 2013

The constitutional obligation of the state to take care of the health of people, *inter alia*, including the duty of the state to ensure medical aid and services in the event of sickness, is determined both by the innate human right to the best possible health (this right is inseparable from human dignity and the right to life) and by the social right to healthcare.

Human life and dignity are exceptional values expressing the integrity and singular essence of a human being (ruling of 9 December 1998). The state is under the constitutional obligation to protect and defend those values. The Constitutional Court has held that innate human rights are the innate possibilities of an individual that ensure his/her human dignity in the spheres of social life; the fact that the legislature, while regulating the relationships connected with the implementation of human rights and freedoms, must guarantee their proper protection constitutes one of the conditions for ensuring human dignity as a constitutional value (rulings of 29 December 2004 and 2 September 2009 and the decision of 20 April 2010). It is clear that human dignity, the right to life, and the right to the best possible health are so tightly interrelated that, on the one hand, in cases where proper health protection is not ensured, the protection of the human right to life and human dignity will no longer be a fully fledged one; on the other hand, the right to sustaining and saving life in the event that the life of a person is in danger is an inseparable and fundamental part of the human right to the best possible health. Therefore, in interpreting the provisions of Paragraph 1 of Article 53 of the Constitution, *inter alia*, account must be taken of their connections with Article 18 of the Constitution, wherein the principle of acknowledging the innate nature of human rights and freedoms is consolidated, and with the provisions of Articles 19 and 21 of the Constitution where the said provisions ensure the protection of the special constitutional values – human life and dignity.

In this context, it should be noted that the human right to the best possible health and the right to healthcare must also be interpreted in the light of the guarantees, consolidated in other provisions of the Constitution, for the protection of various constitutional values, *inter alia*, the inviolability of private life, including the inviolability of the health of a person, as ensured in Article 22 of the Constitution, the grounds (and the guarantees thereof) of the national economy as consolidated in Article 46 thereof, the right to have proper, safe, and healthy conditions at work as consolidated in Paragraph 1 of Article 48 thereof, as well as the duty of the state and each person to protect the environment from harmful influences as established in Paragraph 3 of Article 53 thereof.

The constitutional obligation of the state to take care of the health of people (Paragraph 1 of Article 53 of the Constitution)

The Constitutional Court's ruling of 16 May 2013

In order to implement the constitutional obligation of the state to take care of the health of people, *inter alia*, where the state must ensure medical aid and services for persons in the event of sickness, an efficient system of health protection and proper conditions for its activity must be created. The Constitutional Court has noted that the state has the duty to protect persons from threats to health (to reduce dangers to health and, in certain cases, as far as possible, to prevent them), to improve the ability of a person and society to overcome dangers to health, and to ensure access to medical services in the event of illness (ruling of 2 September 2009). Thus, the state must create the legal and organisational preconditions for the operation of the system of health protection that would ensure quality healthcare (not only the *expressis verbis* guaranteed medical aid and services for persons in the event of sickness, *inter alia*, medical aid to citizens free of charge at state medical establishments, but also other healthcare services for persons and society) accessible to everyone, as well as other health activity (as, for instance, pharmaceutical activity) that is necessary so that it would be possible to implement, in reality and efficiently, the innate human right to the best possible health.

While carrying out this constitutional function, the state institutions that form and implement state health policy must, among other things: take measures in order to satisfy the public need for a sufficient number of healthcare and pharmaceutical specialists of high professional qualification, *inter alia*, predict how many of them will be needed in the future and allocate the necessary state funds for their training; create the conditions in order that healthcare services would actually be accessible to everyone, i.e. in order that the necessary infrastructure would be created and that it would operate so that establishments (including the state-owned ones) providing various healthcare services and pharmacies could be distributed in a manner that would enable the timely rendering of efficient medical aid and other healthcare services; supervise health promotion activity, exercise control over the quality of healthcare services and medicines; create the healthcare funding system that would ensure the financial accessibility to (affordability of) necessary healthcare services and indispensable medicines.

Free-of-charge medical aid to citizens at state medical establishments (Paragraph 1 of Article 53 of the Constitution)

The Constitutional Court's ruling of 16 May 2013

Paragraph 1 of Article 53 of the Constitution consolidates the guarantee of medical aid to citizens free of charge at state medical establishments. This guarantee obligates the state to ensure the necessary conditions for its implementation, i.e. not only to create the required network of state healthcare establishments, but also to cover the costs of providing such medical aid by state funds. Thus, while implementing its discretion to form the state health policy and to choose a model of healthcare funding, the legislature may not disregard the fact that a certain part of healthcare services, in particular, free-of-charge medical aid guaranteed to citizens, must be covered by state budget funds.

The constitutional provision that the procedure for providing medical aid to citizens free of charge at state medical establishments must be established by law does not define *expressis verbis* the amount of the guaranteed aid, but in no way does it mean that, purportedly, all medical aid (let alone other healthcare services) provided to citizens in those establishments should be paid for from state budget funds unconditionally and without paying regard to the financial capacities of the state, since such an interpretation would violate a balance between the constitutional values, would disregard the duty of the Seimas, stemming from the constitutional imperatives of an open, just, harmonious civil society and responsible governance, when it approves the state budget, to take into account, *inter alia*, the existing economic and social situation, the needs and possibilities of society and the state, the available and predicted financial resources, as well as state obligations. Thus, having assessed, *inter alia*, the financial capacities of the state and paying regard to the balance between constitutional values and the constitutional

principles of social harmony, responsible governance, reasonableness, the equality of the rights of persons, and other constitutional imperatives, the legislature must establish the amount of medical aid provided free of charge to citizens where such aid should be covered by state budget funds. However, in doing so, the legislature may not deny the substance of this constitutional guarantee and the state obligation to take care of the health of people. As mentioned before, in interpreting the provisions of Paragraph 1 of Article 53 of the Constitution, *inter alia*, account should be taken of their connection to the state duty to protect human life as consolidated in Article 19 of the Constitution; the right to sustaining and saving life in the event that the life of a person is in danger is an inseparable and fundamental part of the human right to the best possible health. This relation between the constitutional values implies the fact that medical aid free of charge for all citizens must be ensured insofar as it is necessary to save and preserve the life of a person. If a lower extent of such aid were established (by failing to ensure even the minimal vitally important free-of-charge medical aid), the constitutional guarantee for the said aid would in general become meaningless; at the same time, the constitutional obligations of the state to protect the life of a person and to take care of the health of people would also be violated. It needs to be emphasised that free-of-charge medical aid guaranteed to citizens must be in line with the requirements of accessibility and quality raised for healthcare services; the said aid must be given under such conditions and procedure in order that human dignity would be respected.

In this context, it also needs to be noted that the guarantee of free-of-charge medical aid to citizens in namely state medical establishments determines the duty of the state to ensure the provision of vitally important medical aid in state medical establishments, *inter alia*, the permanent operation of the required network of state healthcare establishments providing such aid; however, such a guarantee may not be interpreted as meaning that free-of-charge medical aid covered by state budget funds should be confined only to those establishments. The striving for ensuring the best possible accessibility to vitally important medical aid is also determined by the fact that, in the situations where, due to certain circumstances, such aid cannot be given in state medical establishments in a timely and quality manner, it may also be given in other healthcare establishments that are able to provide such aid in a quality and safe manner; the costs incurred by the latter establishments in the course of providing such aid must be covered by state budget funds.

Thus, the provision of Paragraph 1 of Article 53 of the Constitution, whereby the procedure for providing medical aid to citizens free of charge at state medical establishments is established by law, is a constitutional guarantee for the right of citizens to receive, in a timely manner, vitally important quality medical aid free of charge in state medical establishments; the implementation of the said guarantee must be ensured by state budget funding.

The aforementioned guarantee is not identical to the right to healthcare that is ensured, with regard to citizens as well as other persons, in the course of the implementation of the state obligation, consolidated in Paragraph 1 of Article 53 of the Constitution, to take care of the health of people and to guarantee medical aid and services for a person in the event of sickness.

It should be noted that the state may also assume greater financial obligations than implied by the constitutional guarantee of free-of-charge medical aid for citizens; however, as mentioned before, in such a case account must be taken of the state financial capacities, which are not and cannot be limitless, and regard must be paid to the constitutional imperatives of a balance of values, social harmony, responsible governance, and other constitutional imperatives. The state budget cannot bear the burden mismatched with the financial capacities of the state so that, due to the said burden, the state would be unable to perform its other functions or the fulfilment of such functions would be much more difficult.

The duty of the state to create a system of healthcare funding by public funds based on social solidarity (Paragraph 1 of Article 53 of the Constitution)

The Constitutional Court's ruling of 16 May 2013

While carrying out its constitutional function of taking care of the health of people, the state must ensure not only the funding of free-of-charge medical aid provided to citizens, but also the funding of other

healthcare services. The state must, *inter alia*, guarantee that the healthcare services for individuals, where the said services are not covered by free-of-charge medical aid provided to citizens, would be accessible, according to the needs, to everyone – including the most socially sensitive groups of persons. Thus, the state must create such a system of funding the said services that would enable the accumulation of the funds necessary for paying for the provision of these services. Otherwise, if persons were required to pay (entire price) for such services, they would become unaffordable, thus, in reality, inaccessible. However, under the Constitution, it is not required that all those needs be funded from the state budget. The budget funds of the state as the organisation of all society that must act in the interests of all society in order that social harmony would be ensured must be allocated for carrying out various state functions and for providing various public services; therefore, the balance of constitutional values and social harmony would be violated if, without taking into consideration the financial capacities of the state, the state budget would have to bear such a healthcare funding burden due to which it would no longer be able to perform its other functions or the fulfilment of such functions would be much more difficult.

Thus, when it chooses a model of healthcare funding, the legislature is bound not only by its duty to provide, in the state budget, for the funds necessary to render free-of-charge medical aid to citizens, but also by other constitutional obligations of the state and its financial capacities. The legislature is not allowed to establish any such model of healthcare funding where it would not be based on a balanced assessment of the needs of both society and the state and the financial capacities of the state and where the implementation of such a model by the state would clearly and obviously be impossible; the establishment of such a model would violate the balance of constitutional values and would be in conflict with the constitutional imperatives of social harmony and responsible governance.

Consequently, if it is impossible to allocate the necessary state budget funds in order to ensure the sufficient accessibility, irrespective of the income of a person, to healthcare services for individuals not covered by free-of-charge medical aid guaranteed to citizens, the legislature, while implementing the obligation of the state to take care of the health of people and to guarantee medical aid and services for a person in the event of sickness, as consolidated in Paragraph 1 of Article 53 of the Constitution, not only may, but also must provide for another method, based on social solidarity, of the accumulation of the needed public funds, *inter alia*, may choose compulsory health insurance.

In addition, it needs to be noted that the state duty to create a system of healthcare funding from public funds based on social solidarity, where such a system would allow ensuring sufficient accessibility to healthcare, may not be interpreted as meaning that society should bear the burden of funding all possible healthcare services for persons. In this sphere, it is necessary to find decisions ensuring a balance between the interests of a person as a consumer of healthcare services (patient) and those of all society. The Constitutional Court has held on more than one occasion that the principle of solidarity in civil society does not deny personal responsibility for one's own fate; the recognition of mutual responsibility of a person and society is important in ensuring social harmony, guaranteeing freedom of a person and the possibility of protecting oneself from difficulties that could not be overcome by a person alone (rulings of 12 March 1997 and 26 September 2007, the decision of 20 April 2010, and the rulings of 6 February 2012 and 27 February 2012). The legal regulation governing funding the healthcare of persons should create incentives for everyone to take care of his/her health, to assume the obligation to contribute, as far as possible, to the health funding and to use healthcare services in a responsible and rational manner. Thus, under the Constitution, the legislature also has the powers to stipulate that certain healthcare services must be paid for from the resources of private funding, as, for instance, from voluntary health insurance funds, or by persons themselves paying directly, etc.

Compulsory health insurance as a source for financing healthcare

The Constitutional Court's ruling of 16 May 2013

Having chosen the model of healthcare funding based, *inter alia*, on compulsory health insurance, the legislature must define persons covered by this insurance, the amount (amounts) of the insurance contributions, the terms of payment, sanctions for failure to pay those contributions or for overdue payment

thereof, possible concessions, the period of insurance validity, the powers of the institutions that maintain the said insurance, the healthcare services funded by insurance funds, the principles of the distribution of funds among healthcare establishments, and other substantial elements of this insurance. When it regulates the relationships of compulsory health insurance, the legislature is bound by the requirement, stemming from Paragraph 1 of Article 53 of the Constitution, for ensuring the accessibility, equal to all, to quality healthcare services, by the constitutional imperatives of solidarity, social harmony and justice, as well as by the constitutional principles of responsible governance, reasonableness, proportionality, and the equality of the rights of persons. This implies, among other things, that compulsory health insurance must be universal, i.e. it must cover all members of society, the amount of contributions must depend on the income of persons, this amount must be such that the preconditions could be created for the accumulation of the necessary funds ensuring the sufficient accessibility to quality healthcare services. It needs to be emphasised that, after the legislature chooses compulsory health insurance, the obligation to pay compulsory health insurance contributions, as established under the law, becomes a constitutional duty; as such, the said duty may not be treated as a limitation on the rights of a person.

In this context, it should also be noted that, while seeking to ensure the healthcare accessibility to all regardless of the income of persons, the legislature, *inter alia*, may place on the state the burden of the compulsory health insurance of the most socially sensitive groups of persons; however, this must be done in a responsible manner, by not distorting the essence of social solidarity, without denying the incentives of persons to take care of their health and their duty to contribute, as far as possible, to health funding; thus, this must be done in such a manner that social harmony and a balance between the interests and responsibility of a person and society would not be disturbed.

In the light of the constitutional principle of social solidarity, the period of the entry into validity of compulsory health insurance and the discontinuation thereof could depend, *inter alia*, on the length of the period during which the compulsory health insurance contributions of a person have been duly paid under the procedure established by means of a law. While regulating the relationships in connection with the period of the entry into the validity of compulsory health insurance and the discontinuation thereof, the legislature has a certain degree of discretion; however, in the course of implementing the said discretion it must comply, first of all, with the requirements stemming from the Constitution, *inter alia*, Paragraph 1 of Article 53 thereof, from the constitutional principles of justice, reasonableness, proportionality, and the equality of the rights of persons, as well as from the requirements of EU law and the international treaties of the Republic of Lithuania.

Having chosen compulsory health insurance as one of the sources of healthcare funding, the legislature must clearly define the scope of healthcare services for persons. This can be done by specifying the services provided to insured persons and covered by the funds of this insurance, or, conversely, by specifying those services the provision of which is not covered by insurance funds and which must be covered by private resources; if it is impossible to point this out precisely, sufficiently clear criteria must be established according to which this can be decided in every concrete situation.

It needs to be emphasised that, after the legislature chooses compulsory health insurance based on social solidarity, such insurance must ensure sufficient accessibility to healthcare services.

In addition, it also needs to be emphasised that, after the legislature has chosen the model of healthcare funding based, *inter alia*, on compulsory health insurance, the funds of this insurance may only be used for financing healthcare services for the insured persons that are not covered by free-of-charge medical aid that must be provided from state budget funds to all citizens regardless of whether they are insured by compulsory health insurance. It is not allowed to cover by the funds of compulsory health insurance healthcare services provided to persons not covered by such insurance or to those that have not obtained the said insurance themselves.

[...]

... citizens not insured by this insurance (or those that have not obtained such insurance themselves), as well as all other citizens, have the right, as guaranteed in Paragraph 1 of Article 53 of the Constitution, to medical aid free of charge at state medical establishments in the amount established by means of a law.

The regulation of the activity of healthcare establishments where this activity is understood as economic activity; the distribution of public funds among healthcare establishments (Article 46 and Paragraph 1 of Article 53 of the Constitution)

The Constitutional Court's ruling of 16 May 2013

Having chosen the model of healthcare funding based, *inter alia*, on compulsory health insurance, the legislature, while regulating the distribution of the funds of this insurance among healthcare establishments, must take into consideration the systemic ties of Paragraph 1 of Article 53 of the Constitution with Article 46 thereof that stands at the head of Chapter IV “The National Economy and Labour” and consolidates the constitutional foundations of the national economy.

The economy of Lithuania is based on the right of private ownership, freedom of individual economic activity, and economic initiative (Paragraph 1 of Article 46 of the Constitution). The Constitutional Court has held that among the rules for regulating the economy of this country is the obligation of the state to support the efforts and initiative that are useful to society and are based on private ownership (rulings of 27 October 1998 and 13 May 2005). While regulating economic activity so that it serves the general welfare of the nation, the state must balance the interests of a person and society and must not deny the principle of fair competition and other principles of the economy of Lithuania, which are consolidated in the Constitution (ruling of 17 March 2003).

The Constitutional Court has also held on more than one occasion that, as a rule, the regulation of economic activity is linked with laying down conditions for economic activity, with regulating certain procedures and controlling economic activity, as well as with certain limitations and prohibitions on this activity (*inter alia*, the rulings of 13 May 2005, 29 April 2009, 26 February 2010, and 29 June 2012). While taking account of the particularities of economic activity, the legislature may regulate economic activity in a differentiated manner; however, in doing so, it may not deny the foundations of the economy of Lithuania, which are consolidated in the Constitution (ruling of 17 March 2003).

The activity of healthcare establishments is related to implementing one of the most important innate human rights; therefore, such activity must be regulated and supervised by the state. According to the Constitution, the state must regulate the economic activity in this sphere so that, without denying the constitutional values on which the national economy is based – the private ownership rights as well as freedom of economic activity and initiative – it would ensure the appropriate fulfilment of its constitutional function of taking care of the health of people and the proper implementation of the innate human right to the best possible health and the right to healthcare.

As mentioned before, while carrying out this constitutional function, the state institutions that form and implement the state health policy have the duty to ensure the existence of an adequately distributed and continually operating sufficient network of establishments (including state medical establishments specified *expressis verbis* in Paragraph 1 of Article 53 of the Constitution) that provide various healthcare services. The state must also supervise the activities of all healthcare establishments and control the quality of services provided by them.

The specific nature of healthcare as a sphere of economic activity is determined by the fact that most of healthcare services are funded from public funds that can also be accumulated if the legislature chooses to establish compulsory health insurance. The state, which has the duty to create a system of healthcare funding from public funds based on social solidarity, must, under the Constitution, *inter alia*, the constitutional principle of responsible governance, also take care of the fact that those funds should be used in a responsible and rational manner. Because of the fact that, due to the increasing demand for healthcare services and their increasingly higher standards, due to the more complex and more expensive healthcare technologies, the costs of rendering those services are constantly increasing, while the funds, *inter alia*, the compulsory health insurance funds, allocated in order to cover such costs, are limited, the legislature is faced with the duty to establish such a legal regulation governing funding healthcare services by compulsory health insurance funds that would create the preconditions for the state for planning such funding and distributing the funds among the healthcare establishments in a manner that, without denying

the obligation of the state to support the economic efforts and initiative that are useful to society and are based on private ownership, without denying fair competition between healthcare establishments, and without denying the right of the consumer of healthcare services (patient) to choose a healthcare establishment, it would be possible to ensure high quality of healthcare services funded by those funds and sufficient accessibility to the said services, i.e. their adequate distribution, as well as the continual operation of the required network of state healthcare establishments.

Thus, while being bound by the duty to ensure the rational distribution of the limited funds of compulsory health insurance among the establishments that provide healthcare services, the legislature may lay down the conditions for and limitations on funding such services, *inter alia*, such a procedure for the distribution of those funds, according to which they would be allocated to cover the costs of the healthcare services provided only by those institutions that have, under the conditions established in the law, concluded an agreement with an institution authorised by the state regarding the provision of services funded from compulsory health insurance funds. The procedure for concluding such agreements should be based on the objective and non-discriminatory criteria, known in advance, that would not deny freedom of fair competition and other principles of the economy of Lithuania consolidated in the Constitution. These principles must also be respected when regulating other aspects of financing healthcare services funded by compulsory health insurance funds, as, for instance, when economically justified rates for healthcare services are established. At the same time, it needs to be noted that the legal regulation governing funding healthcare services from compulsory health insurance funds should induce not only fair competition between healthcare establishments, but also their joint work in order to ensure the continuity of healthcare, high quality services, as well as the rational and efficient use of resources.

2.4.2.3. The right to a healthy environment

The protection of the natural environment (Article 54 of the Constitution)

The Constitutional Court's ruling of 13 May 2005

Article 54 of the Constitution lays down the constitutional foundations for the legal regulation governing the relationships connected with using and protecting the natural environment and its individual objects.

Article 54 of the Constitution prescribes:

“The State shall take care of the protection of the natural environment, wildlife and plants, individual objects of nature, and areas of particular value, and shall supervise the sustainable use of natural resources, as well as their restoration and increase.

The destruction of land and subsurface, the pollution of water and air, radioactive impact on the environment, as well as the depletion of wildlife and plants, shall be prohibited by law.”

The Constitution treats the natural environment, wildlife and plants, individual objects of nature, and areas of particular value as national values of universal importance. Protecting the natural environment, wildlife and plants, individual objects of nature, and areas of particular value and ensuring the sustainable use of natural resources, as well as their restoration and increase, as consolidated in Article 54 of the Constitution, constitute a public interest to guarantee which is a constitutional obligation of the state. In its ruling of 6 May 1997, the Constitutional Court held that the implementation of the public interest, which is recognised by the state and is protected by law, is one of the most important conditions for the existence and evolution of society itself.

Article 54 of the Constitution gives rise to the obligation of the state to establish such a legal regulation and to act in such a way that the natural environment and its individual objects would be protected, and that the rational use of natural resources as well as their restoration and increase would be ensured. For this purpose, a particular system of state institutions must be created and must function properly, and necessary funds must be provided for in the state budget in order to protect the natural environment and its individual objects, and to ensure the rational use of natural resources as well as their restoration and increase.

Article 54 of the Constitution gives rise to the following duties of all persons in the territory of the Republic of Lithuania: they must refrain from any action that would inflict damage on land, the subsurface, water, air, plants, or wildlife. The legislature must prohibit any actions that inflict damage on the natural environment and its objects, and must establish legal responsibility for such actions. Such prohibitions and legal responsibility for disregarding them must be established only by means of a law, whereas the procedure of implementing these prohibitions may also be regulated in statutory legal acts.

The state, being under the constitutional obligation to act in order that the protection of the natural environment and its individual objects, the rational use of natural resources, as well as their restoration and increase, would be ensured, may establish, by means of a law, such a legal regulation whereby the use of individual objects (natural resources) of the natural environment would be limited and certain subjects of legal relationships would be obliged to act accordingly or refrain from certain actions.

While protecting the natural environment and its individual objects and ensuring the rational use of natural resources, as well as their restoration and increase, the state must also guarantee the balance of values consolidated in the Constitution.

When regulating the relationships in connection with the protection of the natural environment and its individual objects, the use of natural resources, as well as their restoration and increase, when restricting the use of individual objects (natural resources) of the natural environment, or when obligating certain subjects of legal relationships to act in the respective manner or to refrain from certain actions, the state is bound by the imperative of social harmony, the principles of justice, reasonableness, and proportionality, which are consolidated in the Constitution, *inter alia*, when such restrictions or obligations create interference with the implementation of the constitutional rights and freedoms of a person.

Article 54 of the Constitution names as national values of universal importance various objects of the natural environment: wildlife, plants, land, the subsurface, waters, air, and areas of particular value.

The protection and rational use of wildlife (Article 54 of the Constitution)

The Constitutional Court's ruling of 13 May 2005

... the conclusion should be drawn from the provision "The State shall take care of the protection of ... wildlife ... and shall supervise the sustainable use of natural resources, as well as their restoration and increase" of Paragraph 1 of Article 54 and from the provision "the depletion of wildlife ... shall be prohibited by law" of Paragraph 2 of Article 54 of the Constitution that animals, including wildlife (its resources), is among the natural resources that, under the Constitution, must be protected and whose rational use, restoration, and increase must be ensured.

Wildlife, which is very important for the normal functioning and survival of various ecologic systems, is part of the natural environment. Wildlife is a distinctive aesthetic, scientific, cultural, recreational, and economic value of the natural heritage of society and the entire humankind. Due to this, wildlife is not only a national value: it also has universal and transnational importance. There is no doubt that it is necessary to preserve it and pass it on to posterity.

Wildlife is a notably broad and general notion including all kinds of undomesticated animals. The particularity of wildlife as a value protected and defended under the Constitution also constitutes the fact that it is very dynamic, that wild animals that exist in freedom often change the place of their presence; therefore, it is impossible to manage wildlife as a whole or possess it (as an object).

However, Article 54 of the Constitution gives rise to the obligation of the state to ensure that the populations (species) of wild animals are properly managed (regulated and controlled) in order that the protection and rational use of wildlife as a national value of universal importance is ensured. If the populations (species) of wild animals were not managed (i.e. not regulated and not controlled), or were managed improperly, other objects of the natural environment as well as certain kinds of wild animals themselves and various ecological systems could be harmed. If the proper management (i.e. regulation and control) of the populations (species) of wild animals were not ensured, the preconditions would be created for violating the values (life, health, property, etc.) consolidated in and protected and defended by the Constitution; thus, the preconditions would also be created for violating the rights and interests of persons.

In this context, it should be held that, under Article 54 of the Constitution, the state (its institutions that create law) may and, in certain cases, by taking account of various circumstances, must establish a legal regulation making it possible to properly and effectively manage (i.e. to regulate and control) the populations (species) of wild animals (size, spreading, migration, etc. of populations) in order to ensure the protection of wildlife, its rational use, restoration, and increase and to ensure that no preconditions are created for impoverishing wildlife – a national value of universal importance. While regulating the relationships connected with the management (i.e. regulation and control) of the populations (species) of animals by means of legal acts, the state must comply with the requirements for humane treatment of animals and must not tolerate any cruel and inhumane treatment of animals by other persons.

The state (its institutions) may choose various ways and means of the proper management of the populations (species) of wild animals. On the other hand, while paying regard to the imperative of social harmony and the principles of justice, reasonableness, and proportionality, which are consolidated in the Constitution, the state (its institutions) cannot choose the ways and means of the management (i.e. regulation and control) of the populations (species) of wild animals that could unreasonably restrict or in general deny the rights and legitimate interests of persons or social groups and could violate their legitimate expectations.

[...]

... The state must regulate economic activity so that, without denying the foundations of the national economy – the right of private ownership and individual freedom of economic activity and initiative – it would also ensure the public interest consolidated in Article 54 of the Constitution – the protection of the natural environment, wildlife and plants, individual objects of nature, areas of particular value, as well as the sustainable use of natural resources, their restoration and increase; the state is under the constitutional obligation to guarantee the said public interest.

Hunting as a way of the management of wild animal populations; the right of hunting as an acquired right

The Constitutional Court's ruling of 13 May 2005

... one of the ways of the management (i.e. regulation and control) of the populations (species) of wild animals is hunting – a long-standing tradition of human activity and a social institution. At the same time, it needs to be noted that hunting is applied together with other ways of the management (i.e. regulation and control) of the populations (species) of wild animals where the said ways are of no less importance and also have strong traditions. Hunting and other types of human activity may not be opposed. A reasonable and fair balance must be found between the rights and legitimate interests of persons engaged in hunting and the rights and legitimate interests of other persons.

As a type of human activity and a social institution, hunting is a diverse phenomenon, including: (1) the management (i.e. regulation and control) of the populations (species) of wild animals; (2) pastime activity; (3) economic activity. The said three aspects of hunting are interrelated.

First, as mentioned before, hunting is one of the ways of the management (i.e. regulation and control) of the populations (species) of wild animals, thus, also one of the means of the protection and rational use of wild animals. If compared with other ways of the management (i.e. regulation and control) of the populations (species) of wild animals, the specific characteristic of hunting is, *inter alia*, determined by the fact that, traditionally, private persons – hunters, who, as a rule (but not necessarily), form certain hunting associations (hunting circles, societies, or other organisations) – are entrusted with the exercise of such control over the populations (species) of animals. However, hunting could also be planned and arranged not exclusively through private persons – hunters – or not exclusively through them alone. No matter on what organisational principles hunting and related relationships are based, under the Constitution, the state cannot opt out of the control and supervision of hunting activity.

Second, as a rule, hunting is a pastime activity for hunters (private persons). Hunting as a pastime activity is linked with the implementation of an acquired right: only such persons can engage in this activity who have acquired the right of hunting. It needs to be emphasised that the right of hunting is not a

constitutional right: it arises from lower-ranking legal acts and must be implemented as provided for in legal acts. This right is defended as an acquired right.

Third, hunting is a certain type of economic activity or, more precisely, a constituent part of broader economic activity. It should be noted in this connection that, on the one hand, professional hunting as a source of income of a person is possible; on the other hand, the economic activity of a person can also include the planning and arrangement of hunting.

As mentioned before, the right of hunting is an acquired right. The Constitution does not employ the notion of hunting. Hunting and related relationships are regulated in laws and substatutory acts.

In choosing a model of planning and arrangement of hunting, thus, that of hunting and related relationships, and establishing it in legal acts, the state has broad discretion. While implementing this discretion, the state (law-making subjects according to their competence) may establish the procedure for forming hunting grounds, their sizes, the manner of hunting, the time and other conditions of hunting, it may specify wild animals whose hunting is permitted or prohibited, etc. When regulating these relationships, the state must create the preconditions for ensuring the rational use of huntable wild animals and their protection, by taking account of, *inter alia*, the amount of these resources and the need for regulating their size. In doing so, law-making subjects are bound by the constitutional imperative of social harmony, the principles of justice, reasonableness, and proportionality, which are consolidated in the Constitution, as well as by other norms and principles of the Constitution.

It needs to be noted that in the course of the management (i.e. regulation and control) of populations (species) of wild animals, hunting is applied together with other ways of the management (i.e. regulation and control) of the populations (species) of wild animals. Thus, hunting and other types of human activity may not be opposed; in addition, it is not allowed to create opposition between the rights and legitimate interests of the members of society who are engaged in or otherwise related to hunting and the rights and legitimate interests of other members of society. ... the Constitution gives rise to the obligation for the state, when the state regulates hunting and related relationships, to keep a fair balance between the interests of society and a person, to ensure the public interest, and to avoid any unreasonable limitation on the rights of a person.

Wildlife is also a specific constituent part of the natural environment in the sense that the living environment of wild animals is, *inter alia*, plots of land, forests, and water bodies that, in their turn (with no links to the wild animals that exist in/on them), can be a matter of various legal relationships. ... it needs to be noted that the plots of land, forests, or water bodies that constitute the living surroundings of wild animals may belong to various persons by right of ownership, *inter alia*, to those who own such plots of land, forests, or water bodies.

In addition, as mentioned before, the management (i.e. regulation and control) of the populations (species) of wild animals, where hunting is a type of such management, may also be linked with economic activity; hunting can be a certain type of economic activity or, more precisely, a constituent part of broader economic activity.

Thus, when regulating hunting and related relationships, regard must be paid, *inter alia*, to the provisions of Paragraphs 1 and 2 of Article 23 of the Constitution concerning the inviolability and protection of property and the provisions of Paragraph 1 of Article 46 concerning the values constituting the basis of the national economy – the right of private ownership, individual economic freedom and initiative ...

[...]

As mentioned before, hunting is a certain type of economic activity or, more precisely, a constituent part of broader economic activity of a person. In order to ensure the public interest – the protection and rational use, as well as the restoration and increase of wildlife (its resources) – the state, when regulating hunting as economic activity, may establish specific conditions of economic activity by means of a law, *inter alia*, the sizes of hunting grounds; they are established after taking account of, *inter alia*, the size of the resources of huntable animals and the need for regulating their number. In doing so, the constitutional

principle of proportionality must be applied and the ownership rights of owners of private plots of land, forests, and water bodies, as well as freedom and initiative of their economic activity, must not be denied.

The obligation of the state to ensure the rational use and protection of land as a limited natural resource (Article 54 of the Constitution)

The Constitutional Court's ruling of 30 March 2006

Land is an important part of the ecosystem, it determines the existence and change of other natural resources (*inter alia*, water bodies, plants, and wildlife). Land is also a special natural resource because it cannot be replaced by something else; it cannot be newly created or increased otherwise. Thus, land is a limited resource.

The proper use of land as a limited resource is a condition for the survival of human beings and society as well as the basis of the welfare of the nation; ensuring the rational use of land as a natural resource is a public interest; the state is under the constitutional obligation to guarantee such an interest (rulings of 13 May 2005 and 14 March 2006). The duty of the state is to ensure that land should be used rationally and be protected. The said duty arises, *inter alia*, from the provisions of Article 54 of the Constitution, whereby the state takes care of the protection of the natural environment, wildlife and plants, individual objects of nature, and areas of particular value, and supervises the sustainable use of natural resources, as well as their restoration and increase (Paragraph 1) and, *inter alia*, the destruction of land and subsurface, the pollution of water as well as the depletion of wildlife and plants, are prohibited by law (Paragraph 2). The aforementioned duty also arises from the constitutional imperative of social harmony and other provisions of the Constitution. It needs to be noted that the rational use of land is inseparable from its protection, *inter alia*, from the preservation of rich soil and the landscape, from the protection of land from contamination, improper use, and other negative factors, as well as from ensuring freedom of agricultural business.

The protection of areas of particular value (Article 54 of the Constitution)

The Constitutional Court's ruling of 5 July 2007

Land, forests, parks, and water bodies are special objects of the right of ownership, since the proper use and protection of land, forests, parks, and water bodies is a condition for the survival and development of human beings and society, and the basis of the welfare of the nation. Under the Constitution, the natural environment, wildlife and plants, individual objects of nature, and areas of particular value are national values of universal importance; protecting such values and ensuring their rational use and increase are a public interest; the state is under the constitutional obligation to guarantee such an interest (rulings of 13 May 2005 and 14 March 2006).

Article 54 of the Constitution provides that the state takes care of the protection of the natural environment, wildlife and plants, individual objects of nature, and areas of particular value, and supervises the sustainable use of natural resources, as well as their restoration and increase (Paragraph 1) and that the destruction of land and subsurface, the pollution of water and air, radioactive impact on the environment, as well as the depletion of wildlife and plants, are prohibited by law (Paragraph 2). It also needs to be mentioned that, under Paragraph 3 of Article 53 of the Constitution, the state and each person must protect the environment from harmful influences.

The general notion “areas of particular value” of Paragraph 1 of Article 54 of the Constitution implies that certain parts (areas) of the territory of Lithuania which, due to their ecological, cultural, historical, scientific and other significance, differ from other parts (areas) of the territory of Lithuania, provided this is constitutionally justifiable, not only may, but also must be categorised as areas of particular value. Under the Constitution, the legislature has the powers and discretion to decide which areas should be categorised as areas of particular value; however, the categorisation of concrete areas as areas of particular value must be reasoned. Individual areas may be categorised as areas of particular value according to the criteria

established in legal acts (taking account of their ecological, cultural, historical, scientific, and other value, etc.).

In the context of the notion “areas of particular value”, as a general notion, of Paragraph 1 of Article 54 of the Constitution, it needs to be mentioned that the Constitution does not prevent the usage of the words or formulas in laws and other legal acts that are different from those used in the text of the Constitution Thus, the areas of particular values mentioned in Article 54 of the Constitution may be named in laws differently, provided that, due to this, the content of the constitutional notion “areas of particular value” is not distorted or denied.

[...]

Since the legislature has the powers to categorise certain areas as areas of particular value, when taking account of a special imperishable value of the objects of nature that are in the territories of special value, their significance and the necessity to preserve them for posterity, the constitutional duty that falls on the state to take care of the preservation of the areas of particular value and the rational use thereof, it also has the powers to establish a special regime of the protection and use of such areas. It was held in the Constitutional Court’s ruling of 14 March 2006 that such a special legal regime implies, *inter alia*, certain conditions of, and limitations and prohibitions on, the economic and other activity in these areas, where, as a result of such actions, the landscape and the individual objects that are in particular areas can be changed, etc.

Under the Constitution, the state also has the duty to take care of such natural objects of state significance which belong by right of ownership to other persons, but not to the state, and to secure their protection. This duty of the state may not be interpreted as releasing the owners of particular natural objects from the duty to contribute themselves to the preservation of the said natural objects and to observe the legal regime established with regard to those natural objects.

Thus, due to the fact that, in the areas of particular value, natural and other objects can belong by right of ownership to very varied subjects – the state, municipalities, as well as legal and natural persons – the discussed limitations and prohibitions may be imposed not only on the state and municipalities, but also on natural and legal persons. In order to ensure the protection of the areas of particular value, it is allowed to interfere by such limitations and prohibitions with the rights of ownership of all owners, including those of private land plots, forests, parks, or water bodies. All said limitations and prohibitions must be constitutionally justifiable, they must not restrict the rights of the owners and other persons more than it is necessary to achieve the universally important objectives (ruling of 14 March 2006).

The right to a healthy environment

The Constitutional Court’s ruling of 2 September 2009

... the right of a person to a healthy environment is a necessary condition for both dignified life and the exercise of many other constitutional rights.

Requirements for the legal regulation governing construction relationships (Article 54 and Paragraph 1 of Article 109 of the Constitution)

The Constitutional Court’s ruling of 31 January 2011

... the legislature must establish such a legal regulation of construction relationships that would ensure the public interest protected under the Constitution, *inter alia*, the protection of the natural environment, the individual objects of nature, protected territories, and the protection of the areas of particular value, as well as the proper and rational use of land, forests, and water bodies. The public interest protected under the Constitution to properly and rationally use land, forests, and water bodies implies the duty of the legislature to establish, in the course of regulating construction relationships by means of a law, such a legal regulation that would ensure the sustainable development of a particular territory, the formation of a healthy environment for living, as well as proper conditions for developing both the infrastructure of residential areas and other spheres of activity.

[...]

While interpreting the provisions, which originate from the Constitution, whereby ownership includes obligations and the right of ownership is not absolute, in conjunction with Article 54 of the Constitution, the Constitutional Court has held that all owners, possessors, and users of plots of land, forests, or water bodies, must pay regard to the constitutional imperative of the protection of the natural environment, must protect the natural environment, must not deteriorate its state, and must not inflict harm on the natural environment (rulings of 14 March 2006 and 22 June 2009).

... the legislature, while seeking to ensure the public interest defended under the Constitution, *inter alia*, the protection of the natural environment, the individual objects of nature, protected territories, and the areas of value, as well as the proper and rational use of land, forests, and water bodies, may provide for different measures aimed at removing the consequences of the construction that violates the requirements of legal acts. Such measures may, *inter alia*, include the obligation to demolish a structure that is being built (or has been built) or to properly restructure it (to demolish part of the structure, to rebuild it, etc.). When establishing the said measures, consideration must be given to the principle of proportionality. According to this principle, measures provided for in laws must be in line with the pursued objectives that are essential to society and constitutionally justifiable. These measures must be necessary in order to protect the rights and freedoms of other persons, the values consolidated in the Constitution, and/or constitutionally important objectives.

The Constitution, *inter alia*, Paragraph 1 of Article 109 thereof, and the constitutional principles of justice and a state under the rule of law give rise to the duty of the legislature, when it regulates the relationships connected with the removal of the consequences of the construction that violates the requirements of legal acts, to establish the criteria under which and/or the situations where a court that decides on the legal consequences of the construction that violates the requirements of legal acts, after assessing all circumstances of the case and while following the principles of justice, reasonableness and proportionality, would have the possibility of choosing a proper measure for the removal of the consequences of the construction that violates the requirements of legal acts.

The right to a healthy and clean environment; the duty to preserve nature and to compensate for any harm inflicted on the natural environment; the obligation of the state to ensure the protection of both the natural environment and areas of particular value (Paragraph 3 of Article 53 and Article 54 of the Constitution)

The Constitutional Court's ruling of 16 December 2015

Paragraph 3 of Article 53 of the Constitution provides that the state and each person must protect the environment from harmful influences. Under Article 54 of the Constitution, the state takes care of the protection of the natural environment, wildlife and plants, individual objects of nature, and areas of particular value, and supervises the sustainable use of natural resources, as well as their restoration and increase (Paragraph 1); the destruction of land and subsurface, the pollution of water and air, radioactive impact on the environment, as well as the depletion of wildlife and plants, are prohibited by law (Paragraph 2).

When interpreting the provisions of the Constitution consolidating the constitutional foundations of environmental protection, the Constitutional Court has noted that:

– these provisions express one of the objectives of the activities of the state, i.e. to ensure the rights of people to a healthy and clean environment; environmental protection is the concern and obligation of the state and every resident, and both public and private interests must be devoted to improve the quality of the environment (rulings of 1 June 1998, 31 January 2011, and 9 May 2014); these provisions give rise to the duty of all persons to preserve nature and to compensate for any harm (losses) inflicted by them on the natural environment (rulings of 29 October 2003 and 9 May 2014);

– under the Constitution, the natural environment, wildlife and plants, individual objects of nature, and areas of particular value are national values of universal importance; protecting such values and ensuring their rational use and increase are a public interest; the state is under the constitutional obligation to guarantee such an interest (rulings of 13 May 2005 and 14 March 2006);

– all persons in the territory of the Republic of Lithuania must refrain from any action that would inflict damage on land, the subsurface, water, air, plants, or wildlife; the legislature must prohibit any actions that inflict damage on the natural environment and its objects, and must establish legal responsibility for such actions; while such prohibitions and legal responsibility for disregarding them must be established only by means of a law, the procedure of implementing these prohibitions may also be regulated in statutory legal acts (ruling of 13 May 2005);

– the state, being under the constitutional obligation to act so that the protection of the natural environment and its individual objects, the rational use of natural resources, their restoration and increase would be ensured, may establish, by means of a law, such a legal regulation under which the use of individual objects (natural resources) of the natural environment would be limited and certain subjects of legal relationships would be obliged to act accordingly or refrain from certain actions; in doing so, the state is bound by the constitutional imperative of social harmony, and by the principles of justice, reasonableness and proportionality, which are consolidated in the Constitution (rulings of 13 May 2005 and 14 March 2006).

Regulating economic activity in order to ensure the protection of the natural environment and human health (Paragraph 3 of Article 46, Paragraphs 1 and 3 of Article 53, and Article 54 of the Constitution)

The Constitutional Court's ruling of 16 December 2015

When interpreting the provisions of Paragraph 3 of Article 53 and Article 54 of the Constitution in conjunction with both Paragraph 3 of Article 46 thereof, according to which the state regulates economic activity so that it serves the general welfare of the nation, and the provision of Paragraph 1 of Article 53 thereof, whereby the state takes care of the health of people, the Constitutional Court has noted in its jurisprudence that:

– in order to ensure the protection and rational use of both natural environment and individual objects of nature, their restoration and increase, and while regulating economic activity, the state may establish the specific conditions and procedures of, and means of control over economic activity, as well as certain limitations or prohibitions on the economic activity related to the use of certain natural resources (rulings of 13 May 2005 and 14 March 2006);

– when the legislature regulates economic activity, it faces the requirement stemming from the Constitution, *inter alia*, Paragraph 3 of Article 46, Paragraphs 1 and 3 of Article 53, and Article 54 thereof, to establish such limitations on this activity that would aim to ensure the general welfare of the nation, *inter alia*, to protect against harmful impacts on human health and the environment, to use natural resources in a rational manner, and to remedy the damage caused to the natural environment (ruling of 9 May 2014).

In this context, it should also be noted that the duty of the state consolidated in Paragraph 3 of Article 46 of the Constitution to regulate, by taking account of the resources of the state, its material and financial possibilities and other important factors, the economic activity so that it would serve the general welfare of the nation implies the requirement for the legislature, when it regulates such activity, to balance different constitutional values, *inter alia*, those protected under Articles 46, 53, and 54 of the Constitution: freedom of individual economic activity and economic initiative, freedom of fair competition, the protection of the interests of consumers, the protection of human health and environment (rulings of 5 March 2015, 3 April 2015, and 29 October 2015).

The duty of the state, when regulating economic and other activity related to the use of the subsurface, to ensure the protection of the subsurface and other objects of the natural environment (land, water, air, plants, wildlife) and human health, as well as the rational use of natural resources (Paragraph 3 of Article 46, Paragraphs 1 and 3 of Article 53, and Article 54 of the Constitution)

The Constitutional Court's ruling of 16 December 2015

The subsurface is among the objects of natural environment directly mentioned in Article 54 of the Constitution; thus, the state is under the constitutional obligation to ensure the protection and rational use of the subsurface.

In this context, it should be mentioned that, under Paragraph 1 of Article 47 (wording of 23 January 2003) of the Constitution, the subsurface belongs by right of exclusive ownership to the Republic of Lithuania. The subsurface is a special object of the natural environment, it belongs by right of exclusive ownership to the state and may never become the property of anyone else. The fact that the subsurface is under the exclusive ownership of the state provides the constitutional ground for establishing a special and specific legal regime of the protection and exploitation of the subsurface compared with other objects of nature.

Thus, the constitutional obligation of the state to ensure the proper protection and rational use of the subsurface as a national value of universal importance that belongs to the state by right of exclusive ownership implies a special legal regulation of the protection and use of the subsurface, *inter alia*, the special conditions, as well as limitations and prohibitions, of the economic and other activity related to the use of the subsurface.

As mentioned before, the duty, consolidated in Paragraph 3 of Article 46 of the Constitution, for the state to regulate economic activity so that it serves the general welfare of the nation implies the requirement that the legislature, when it regulates such activity, should balance different constitutional values, *inter alia*, those protected under Articles 46, 53, and 54 of the Constitution: freedom of individual economic activity and economic initiative, freedom of fair competition, the protection of consumer interests, and the protection of human health and the environment.

In the context of the constitutional justice case at issue, it should be noted that, in regulating the economic activity related to the use of the subsurface, account should be taken, *inter alia*, of the economic interests of the state, *inter alia*, the necessity to ensure the security and reliability of the energy system as a constitutionally important objective and a public interest. Under the Constitution, *inter alia*, Paragraph 3 of Article 46 thereof, when regulating the economic activity in the sphere of energy so that it serves the general welfare of the nation, the legislature is obliged to establish such a legal regulation that would ensure the security, stability, and reliability of the energy system, *inter alia*, the possibility of receiving energy supplies from multiple sources (rulings of 3 April 2015 and 29 October 2015). Thus, under the Constitution, in an attempt to ensure, among other things, the security and reliability of the energy system, *inter alia*, the possibility of receiving energy resources from various sources, the legal regulation governing the economic activity related to the use of the subsurface should be established whereby the conditions could be created for appropriate exploration of the subsurface and for rational use of the resources thereof.

At the same time, it needs to be emphasised that, under the Constitution, *inter alia*, under the provisions of Paragraph 3 of Article 46, Paragraphs 1 and 3 of Article 53, and Article 54 thereof, while regulating the economic or other activity related to the exploitation of the subsurface, the state must ensure the protection of the subsurface, other objects of the natural environment (land, water, air, wildlife, plants), and human health against harmful impacts, must prevent the destruction and pollution of the environment, must prevent both radioactive impact on the environment and the depletion of wildlife and plants, and must ensure the rational use of natural resources.

The economic or other activity related to the use of the subsurface may pose a threat to the environment and human health; therefore, according to the provisions of Paragraph 3 of Article 46, Paragraphs 1 and 3 of Article 53 and Article 54 of the Constitution, when implementing its discretion to form the state economic policy, *inter alia*, the policy of using the subsurface, the legislature must regulate this activity so

that different constitutional values might be balanced and, in an effort to ensure the state economic interests, *inter alia*, the security and reliability of the energy system, must at the same time create the necessary legal preconditions for protecting the environment and human health against any possible harmful impact caused by such activity, and prevent the emergence of any possible damage on the environment and human health. In addition, the legislature has the powers to ban completely a certain activity related to the subsurface, as, for instance, the use of subsurface specific resources or the application of a certain method (technology) of the exploration and/or extraction of such resources.

In the context of this case, it should be noted that, under the Constitution, *inter alia*, the provisions of Paragraph 3 of Article 46, Paragraphs 1 and 3 of Article 53, and Article 54 thereof, such a legal regulation of economic activity is also possible, which is established by the legislature and is designed for ensuring the general welfare of the nation, as well as related to using the subsurface, whereby it is allowed to apply the ways (technologies) of researching the subsurface and extracting its resources where such ways (technologies) might pose a threat to the environment or human health. At the same time, it needs to be emphasised that the legislature, when regulating the possibility of applying such methods (technologies) for exploring and/or extracting subsurface resources, must also establish effective measures that could create preconditions for the proper protection of the environment or human health and would not allow any such economic activity by which inevitable harm could be inflicted on the environment or human health. The said measures must ensure, among other things, that the economic activity related to the exploitation of the subsurface is assessed in terms of its possible impact on the environment, also that this economic activity is subject to the conditions aimed at protecting the environment and human health, as well as that an effective supervision is carried out over such activity (*inter alia*, its compliance with the technological requirements).

[...]

... if it transpired that the measures for protecting human health and the environment, as established in laws, were not effective enough, the Constitution, *inter alia*, the provisions of Paragraph 3 of Article 46, Paragraphs 1 and 3 of Article 53, and Article 54 thereof, would give rise to the duty of legislature to establish additional measures for the protection of human health and the environment, and, should it prove impossible to do so, the legislature would have to prohibit conducting certain activity related to the subsurface, as, for instance, using certain subsurface resources or applying a certain method (technology) for exploring or extracting such resources.

The protection of the natural environment; the legal regulation of forestry management in order to ensure the protection of forests (Article 54 of the Constitution)

The Constitutional Court's ruling of 16 April 2019

... under Article 54 of the Constitution, the state takes care of the protection of the natural environment, wildlife and plants, individual objects of nature, and areas of particular value, and supervises the sustainable use of natural resources, as well as their restoration and increase (Paragraph 1); the destruction of land and subsurface, the pollution of water and air, radioactive impact on the environment, as well as the depletion of wildlife and plants, shall be prohibited by law (Paragraph 2).

The Constitutional Court has noted that land, forests, parks, and water bodies are special objects of the right of ownership, since the proper use and protection of land, forests, parks, and water bodies is a condition for the existence of human beings, the survival and development of human beings and society, and the basis of the welfare of the people; under the Constitution, the natural environment, wildlife and plants, individual objects of nature, and areas of particular value are national values of universal importance; protecting such values and ensuring their rational use and increase is a public interest; the state is under the constitutional obligation to guarantee such an interest (rulings of 14 March 2006 and 5 July 2007).

[...]

... the Constitution, *inter alia*, Articles 46 and 54 and Paragraph 2 of Article 128 thereof, and the constitutional principle of a state under the rule of law give rise to the duty of the legislature to establish, by means of a law, the essential conditions for forestry management; the legislature must establish a clear and reasoned model of forestry management, *inter alia*, the respective subjects responsible for the management of forests belonging to the state by right of ownership, or the criteria for determining such subjects. It should also be noted that, while establishing the legal regulation governing forestry management, the legislature must observe, *inter alia*, the duty of the state, which stems from Paragraph 3 of Article 46 of the Constitution, to regulate economic activity so that it serves the general welfare of the people and, at the same time, the legislature must implement the requirements, which stem from Article 54 and Paragraph 2 of Article 128 of the Constitution, *inter alia*, to ensure the proper protection of forests, as well as the rational management and use of forests as state-owned property.

The legal regulation of hunting and related relationships

The Constitutional Court's ruling of 11 July 2019

... under the Constitution, *inter alia*, Article 54 thereof, seeking to ensure the public interest of the protection and rational use of wildlife resources, as well as their restoration and increase, the legislature may exercise its broad discretion to regulate hunting and related relationships by establishing also such a legal regulation under which hunting in the particular hunting grounds would be permitted exclusively upon obtaining, under the procedure and conditions provided for in the law, a permit to use wildlife resources in these hunting grounds. ... in order to ensure the said public interest, the legislature may establish, by means of a law, such a legal regulation according to which the users of hunting grounds may also include associations uniting persons who meet the requirements laid down in legal acts and have acquired the right to hunt.

... under the Constitution, *inter alia*, Articles 23 and 54 thereof, having chosen to regulate hunting and related relationships in such a way that allows hunting in the particular hunting grounds exclusively upon obtaining the respective permit under the procedure and conditions provided for in the law, the legislature must, by means of a legal regulation, create the preconditions for reconciling, on the one hand, the interests of an owner of a private land plot of a certain size if this land plot is located in hunting grounds and this owner is not a user of these hunting grounds but wishes to exercise the acquired right to hunt in the land plot under the ownership of this owner and, on the other hand, the interests of the respective user of hunting grounds, *inter alia*, an association uniting persons who meet the requirements laid down in legal acts and have acquired the right to hunt. Such a legal regulation must pay regard to the Constitution, *inter alia*, freedom of association, consolidated in Article 35 thereof.

The duty of the state to ensure the special protection of the Curonian Spit as a public interest protected by the Constitution (Paragraph 2 of Article 42 and Paragraph 1 of Article 54 of the Constitution)

The Constitutional Court's ruling of 25 November 2019

... in view of the enduring value of the Curonian Spit for the present and future generations, as it is a unique natural and human-made landscape complex, which is part of the national and world natural, historical, and cultural heritage, in accordance with Paragraph 2 of Article 42 and Paragraph 1 of Article 54 of the Constitution, the Curonian Spit is a particularly valuable area to be protected and a natural and cultural heritage site of global significance; the state is under the constitutional obligation to ensure that the part of the Curonian Spit that belongs to the Republic of Lithuania is under special protection as a public interest protected by the Constitution.

This, *inter alia*, means that, under the Constitution, *inter alia*, Paragraph 2 of Article 42 and Paragraph 1 of Article 54 thereof, the state must preserve the identity and integrity of the Curonian Spit, as a particularly valuable area and a natural and cultural heritage site of global significance, *inter alia*, its valuable features, among other things, unique landscape, cultural, natural, and historical heritage, unique architectural objects, and archaeological sites. The fulfilment of this constitutional duty requires that legal

acts provide for a special regime for the protection and use of the Curonian Spit, which, *inter alia*, implies, the means of protecting natural and cultural objects in this area, as well as the special conditions, limitations, and prohibitions on economic activities, construction, and any other activities that can change the landscape or individual objects in this area.

It should be noted that, in implementing the powers, consolidated in Article 94 of the Constitution, *inter alia*, to manage national affairs, execute laws and the resolutions of the Seimas on the implementation of laws, and to perform other duties prescribed to the Government by the Constitution and other laws, the Government must establish the measures for implementing the special regime for the protection and use of the Curonian Spit. Otherwise, no preconditions would be created for the effective fulfilment of the duty of the state, stemming from the Constitution, *inter alia*, Paragraph 2 of Article 42 and Paragraph 1 of Article 54 thereof, to preserve the identity and integrity of the Curonian Spit, as a particularly valuable area and a natural and cultural heritage site of global significance, thus, also to ensure the special protection of the Curonian Spit as a public interest protected by the Constitution.

The special regime for the protection and use of the Curonian Spit, which has been established in implementing the duty of the state, stemming from the Constitution, *inter alia*, Paragraph 2 of Article 42 and Paragraph 1 of Article 54 thereof, to ensure the special protection of the Curonian Spit and which, *inter alia*, implies limitations and prohibitions on economic activities, construction, and any other activities, must be applied to the state, municipalities, and other owners and users of the respective objects located in the Curonian Spit. In view of the fact that the implementation of this special regime for the protection and use of the Curonian Spit, which is necessary in order to ensure the special protection of the Curonian Spit as a public interest protected by the Constitution, *inter alia*, the requirement to restore what has been changed, destroyed, or otherwise infringed in violation of the special regime for the protection and use of the Curonian Spit, should be regarded as a constitutionally justifiable objective, due to which the property rights of the owners and users of objects located in the Curonian Spit may be subject to limitations, the measures of implementing the special regime for the protection and use of the Curonian Spit cannot in themselves be regarded as a violation of property rights, protected under Article 23 of the Constitution.

In view of the requirement to respect the general legal principle of *ex injuria jus non oritur* (illegal acts cannot create law), which stems from the constitutional principle of a state under the rule of law and according to which no one can take advantage of his/her own illegal act, as well as in view of the constitutional principle of justice, it should be noted that the constitutionally consolidated duty of the state to preserve the identity and integrity of the Curonian Spit and to ensure its special protection as a public interest protected by the Constitution means that the consequences of non-compliance with the special regime, established under Paragraph 2 of Article 42 and Paragraph 1 of Article 54 of the Constitution, for the protection and use of the Curonian Spit, as well as non-compliance with the limitations and prohibitions implied by this regime, may not be legalised by any decisions or agreements of state or municipal institutions or officials; such decisions or agreements, among other things, may not create the preconditions for disrespecting the imperative, which stems from the Constitution, *inter alia*, Article 109 thereof, as well as from the constitutional principle of a state under the rule of law and the constitutional principle of justice, to execute effective court decisions, which are, as mentioned before, binding on all institutions of state power and governance and all other legal and natural persons and which, *inter alia*, may impose the obligation on the owners and users of the respective objects located in the Curonian Spit to restore what has been changed, destroyed, or otherwise infringed in violation of the special regime for the protection and use of the Curonian Spit.

2.4.2.4. The duty of the state to ensure the protection of family, motherhood, fatherhood, and childhood

The protection of the rights of underage children (Paragraph 3 of Article 39 of the Constitution)
The Constitutional Court's ruling of 13 June 2000

Paragraph 3 of Article 39 of the Constitution prescribes: “Under-age children shall be protected by law.”

This provision of the Constitution means that sufficient and effective protection must be guaranteed for the rights and legitimate interests of underage children, and that the legislature and other state institutions regulating both the legal situation of underage children and other relationships must respect the rights and legitimate interests of underage children.

The duty of parents to support their children (Paragraph 6 of Article 38 of the Constitution); supporting children who have reached the age of majority

The Constitutional Court’s ruling of 7 June 2007

While interpreting the provision of Paragraph 6 of Article 38 of the Constitution, whereby the right and duty of parents is to support their children until they reach the age of majority, it needs to be noted that this provision is designed to regulate the relationships between parents and their underage children. It does not regulate the relationships between parents and their children after the children reach the age of majority.

It also needs to be noted that this constitutional provision may not be interpreted as meaning that, purportedly, the legislature cannot, in general, establish the duty of parents to support their children of the age of majority who require support if such a duty may be based on other provisions of the Constitution.

... the said provision of Paragraph 6 of Article 38 of the Constitution may not be interpreted as meaning that, purportedly, the legislature cannot, in general, establish the duty of parents to support their children of the age of majority who require support in order that they could acquire particular education.

For instance, taking account of the fact that, in Lithuania, secondary education is usually acquired when a pupil has already reached the age of majority (has turned 18), it is obvious that the parents have the duty to support their child for the period of time during which the pupil, studying honestly and showing good results, may acquire secondary education, as well as such secondary education which could be provided together with professional one. Such a duty of parents should be derived not only from laws, but also from the entirety of the provisions of the Constitution, *inter alia*, from the constitutional consolidation of the value of relationships between parents and children, the striving for a just and harmonious civil society, and the social orientation of the state.

The possibility of the legislative consolidation of the duty of parents to provide material support for their children of the age of majority when they study at schools of higher education, *inter alia*, their day-time departments, should be assessed differently. The legislature cannot disregard the circumstance that, in this case, legal relationships emerge between the persons of the age of majority – a student of a school of higher education and one of his/her parents or both parents.

The Constitutional Court has held that the principle of solidarity, which is enshrined in the Constitution, does not deny personal responsibility for one’s destiny (rulings of 12 March 1997, 25 November 2002, 3 December 2003, 5 March 2004, and 13 December 2004). It needs to be emphasised that relationships between parents and children, even when the latter reach the age of majority, in most aspects are special ones and their ties are constitutionally valuable. However, in itself it does not mean that it is possible to establish such a legal regulation that the burden of implementing the decisions that were independently adopted by children who reached the age of majority would unconditionally be transferred to their parents who no longer have ... and may not have (under the Constitution) any power (power of parents) over their children of the age of majority who adopt those decisions. ...

It is obvious that parents also have moral obligations to their children who reached the age of majority, as well as that children have moral obligations to their parents. However, it needs to be emphasised that it is impossible to ensure the fulfilment of moral obligations (or their fulfilment “to the full extent”) by laying down analogous legal duties in legal acts.

Article 38 of the Constitution consolidates not only the right and duty of parents to bring up their children to be honest people and faithful citizens, and to support them until they reach the age of

majority (Paragraph 6), but also, *inter alia*, the duty of children to respect their parents, to take care of them in their old age, and to preserve their heritage (Paragraph 7).

After the legislature decides to establish, by means of a law, the duty of parents to provide material support for their children of the age of majority who require support when they study at schools of higher education, it is not permitted to deny any of the rights (*inter alia*, the right of ownership) and legitimate interests of parents or the rights and legitimate interests of other persons defended and protected under the Constitution. It is not permitted to restrict, let alone deny the powers of courts to administer justice, either. For instance, while consolidating the said duty of parents, regard must be paid to the possibilities of parents and their duties to other persons (*inter alia*, underage children, other members of the family, dependants). It is not allowed to establish any such a legal regulation that would create the preconditions (because of the fulfilment of such a duty by parents as established by law) for substantially worsening the situation of parents or other persons, let alone to establish such a duty of parents to provide material support for their children of the age of majority who require support when they study at schools of higher education where, in general, such support could not be carried out by parents without inflicting substantial harm on their own rights or the rights of other persons. In addition, it is not allowed to establish any such a legal regulation whereby a court, in all cases, when parents or one of the parents has certain income or other property, especially when this income or other property is not large (it needs to be emphasised that the size or sufficiency thereof may not be assessed only according to such formal criteria as the minimum standard of living, the minimum monthly salary, the average remuneration for work, etc. that are established in legal acts at present), would have the duty to award support for a child of the age of majority who requires support when he/she learns at a school of higher education. It should particularly be emphasised that it is not permitted to establish any such a legal regulation whereby support could be awarded from such parents who themselves need support, guardianship, etc.

It also needs to be noted that, under the Constitution, the legal regulation whereby a court could award the support of parents for a person of the age of majority who seeks to acquire additional higher education, even though he/she requires support, as well as the legal regulation whereby a court could award the support of parents for such a person of the age of majority seeking education (*inter alia*, higher education) who studies dishonestly, underachieves in studies, and abuses the rights of the family, would be intolerable.

These as well as other imperatives that defend the rights and legitimate interests of parents and other persons are determined by the fact that ... the institution of support of the children of the age of majority who require support and who study at the day-time departments of schools of higher education essentially differs from the institution of support of underage children; the court award of support for persons of the age of majority may not be based on the same principles as for underage children. Otherwise, the concept of the age of majority itself, as consolidated in the Constitution and in the whole legal system, would be denied.

It needs to be emphasised that, on deciding to establish, by means of a law, the duty of parents to provide material support for their children of the age of majority who require support when they study at schools of higher education, the legislature must not be limited exclusively to the establishment of the said duty, especially when the extent of this duty becomes clear only when a court decides a case regarding the award of support, but it must establish all essential elements of this legal institution. Otherwise, legal ambiguity and uncertainty would be created; at the same time, the preconditions would be created for the emergence of legal situations where the possibilities of a court to administer justice would be worsened (where it would be sometimes impossible to administer justice at all); thus, the rights and freedoms of a person, as well as other constitutional values, could be violated.

It also needs to be noted that, on deciding to establish, by means of a law, the duty of parents to provide material support for their children of the age of majority who require support when they study at schools of higher education, the legislature may establish only such a legal regulation whereby it would be possible to award the support of parents to the said person who requires support only in cases where this person has made use of all reasonable possibilities of providing himself/herself with the funds necessary for his/her learning (studies) at a school of higher education.

It also needs to be noted that, under the Constitution, the State of Lithuania is socially oriented and it is thus under the constitutional obligation to assume (and it must assume) the burden of fulfilling certain obligations. The constitutional principle of social solidarity also implies the possibility of distributing this burden to a certain extent among the members of society; however, such distribution must be constitutionally justifiable; it may not be disproportionate; and it may not deny the social orientation of the state and the obligations to the state that stem from the Constitution.

The obligation of the state to ensure the protection of family, motherhood, fatherhood, and childhood; the constitutional concept of family (Paragraphs 1 and 2 of Article 38 of the Constitution)

The Constitutional Court's ruling of 28 September 2011

Paragraph 1 of Article 38 of the Constitution prescribes: "The family shall be the basis of society and the State"; Paragraph 2 of this article prescribes: "Family, motherhood, fatherhood, and childhood shall be under the protection and care of the State."

The Constitutional Court has held that the provisions of Paragraphs 1 and 2 of Article 38 of the Constitution express the obligation of the state to establish, by means of laws and other legal acts, such a legal regulation that would ensure that family, as well as motherhood, fatherhood, and childhood, as constitutional values, would be fostered and protected in all ways possible (rulings of 13 June 2000 and 5 March 2004), and that Paragraphs 1 and 2 of Article 38 of the Constitution consolidate the constitutional principles of the most general nature (ruling of 5 March 2004).

The meaning of family as a fostered and protected constitutional value is confirmed by the fact that various aspects of the concept of family are also enshrined in other provisions of articles of the Constitution, *inter alia*, in the provision of Paragraph 1 of Article 39, whereby the state takes care of families raising and bringing up children at home, and renders them support according to the procedure established under the law, in the provision of Paragraph 4 of Article 22, whereby the law and courts protect everyone from arbitrary or unlawful interference with his/her private and family life, in the provision of Paragraph 5 of Article 26, whereby parents and guardians take, without restrictions, care of the religious and moral education of their children and wards according to their own convictions, in the provision of Article 31, whereby it is prohibited to compel anyone to give evidence against himself/herself, or his/her family members or close relatives, in the provisions of Article 146, whereby the state takes care of and provides for the families of servicemen who lose their lives or die during military service, also whereby the state provides for the families of citizens who lose their lives or die in defence of the state. The said constitutional provisions form the basis for the state family policy.

The provisions of Paragraph 1 of Article 38 of the Constitution should be interpreted by taking account of other provisions of the same article of the Constitution, *inter alia*, Paragraph 2, which provides that family, motherhood, fatherhood, and childhood are under the protection and care of the state, Paragraph 3, which provides that marriage is concluded on the free mutual consent of man and woman, also Paragraph 5, which provides that the rights of spouses are equal in the family.

... the constitutional concept of family may not be derived solely from the institution of marriage, which is consolidated in the provisions of Paragraph 3 of Article 38 of the Constitution. The fact that the institutions of marriage and family are consolidated in the same Article 38 of the Constitution indicates an inseparable and unquestionable relationship between marriage and family. Marriage is one of the grounds of the constitutional institution of family for the creation of family relationships. It is a historically established family model that has undoubtedly had an exceptional value in the life of society and ensures the viability of the Nation and the state, as well as their historical survival.

Nonetheless, this does not mean that the Constitution, *inter alia*, the provisions of Paragraph 1 of Article 38 thereof, does not (do not) protect and does not (do not) defend families other than those founded on the basis of marriage, *inter alia*, such as the relationships of a man and a woman living together without concluding a marriage, which are based on the permanent bonds of emotional affection, reciprocal understanding, responsibility, respect, the shared upbringing of children, and similar ones, as well as on

the voluntary determination to take on certain rights and duties, which form the basis for the constitutional institutions of motherhood, fatherhood, and childhood.

Thus, the constitutional concept of family is based on mutual responsibility between family members, understanding, emotional affection, assistance, and similar bonds, as well as on the voluntary determination to take on certain rights and duties, i.e. the said concept is based on the content of relationships, whereas the form of expression of these relationships has no essential significance for the constitutional concept of family.

The duty, stemming from Paragraph 1 of Article 38 of the Constitution, for the state to establish, by means of a law and other legal acts, such a legal regulation that would ensure the protection of the family as a constitutional value implies not only the obligation of the state to establish such a legal regulation that, *inter alia*, would create the preconditions for the proper functioning of a family, would strengthen family relationships, and would defend the rights and legitimate interests of family members, but also the obligation of the state to regulate, by means of a law and other legal acts, family relationships in such a way that no preconditions would be created for discrimination against certain participants in family relationships (as, for instance, a man and a woman who live together without having registered their union as a marriage, their children (adopted children), single parents who are raising their child (adopted child), etc.).

[...]

... the Seimas, as the institution of legislative power, has broad discretion in forming the state policy in various areas of social life, *inter alia*, the state family policy, as well as in regulating, by legal acts, social relationships in these areas in a corresponding manner. While implementing its powers to form the state policy in certain areas of public and state life, *inter alia*, the state family policy, the Seimas is obliged to pay regard to the norms and principles of the Constitution.

... under the Constitution, *inter alia*, the constitutional principle of a state under the rule of law, the Seimas, as the institution of legislative power, when exercising its constitutional powers and regulating, by legal acts, family relationships, *inter alia*, formulating the notions of subjects of these relations, must pay regard to the Constitution and the requirements stemming therefrom, *inter alia*, those of the equality of rights, human dignity, and respect for private life. Under the Constitution, *inter alia*, the constitutional principle of a state under the rule of law, in the course of regulating family relationships in laws and other legal acts and defining the family as a subject of legal relationships, the duty arises for the Seimas, as the institution of legislative power, to take account of the specific nature of the relationships under regulation, *inter alia*, the particularities of the subjects of legal relationships; the said particularities objectively determine the necessity to define these subjects in the context of those concrete relationships the participants of which they are.

[...]

The constitutional concept of family must also be interpreted by taking account of the international obligations of the State of Lithuania that were undertaken after it had ratified the Convention for the Protection of Human Rights and Fundamental Freedoms ...

The obligation of the state to ensure the protection of family, motherhood, fatherhood, and childhood (Paragraphs 1 and 2 of Article 38 of the Constitution)

The Constitutional Court's ruling of 27 February 2012

The constitutional grounds for protecting family, motherhood, fatherhood, and childhood are consolidated in Articles 38 and 39 of the Constitution.

Paragraphs 1 and 2 of Article 38 of the Constitution prescribe:

“The family shall be the basis of society and the State.

Family, motherhood, fatherhood, and childhood shall be under the protection and care of the State.”

The Constitutional Court has held that these provisions of Paragraphs 1 and 2 of Article 38 of the Constitution express the obligation of the state to establish, by means of laws and other legal acts, such a legal regulation that would ensure that the family, as well as motherhood, fatherhood and childhood, as

constitutional values, would be fostered and protected in all ways possible (rulings of 13 June 2000, 5 March 2004, and 28 September 2011). Paragraphs 1 and 2 of Article 38 of the Constitution consolidate the constitutional principles of the most general nature (rulings of 5 March 2004 and 28 September 2011).

The state protection and care guaranteed in Paragraph 2 of Article 38 of the Constitution is implemented in various ways by creating a favourable environment for family, motherhood, fatherhood and childhood as constitutional values. The constitutional self-obligation of the state to protect and care for family, motherhood, fatherhood and childhood is also from certain aspects expressed, as a general principle, in other provisions of the Constitution, *inter alia*, in the following paragraphs ... thereof – Paragraph 1 of Article 39 wherein the state care and support is guaranteed to families that raise and bring up children at home, and Paragraph 2 of the same article wherein working mothers are guaranteed paid leave before and after childbirth, as well as favourable working conditions and other concessions. However, the imperative consolidated in Paragraph 2 of Article 38 of the Constitution, whereby family, motherhood, fatherhood, and childhood are under the protection and care of the state, may not be interpreted as including the protection guarantees only of the aforementioned constitutional values consolidated in Paragraphs 1 and 2 of Article 39 of the Constitution – in the course of implementing the constitutional obligation of the state to create a favourable environment for family, motherhood, fatherhood and childhood, various forms of the protection and support thereof may be developed, *inter alia*: the conditions are ensured for parents to combine work (professional) activities and the duties related to raising and bringing up children; a sufficient network of child care and education institutions is created, assisting families in performing the functions of upbringing and education of children, other necessary infrastructure necessary for fostering family, motherhood, fatherhood and childhood as constitutional values is developed; while taking account of the needs of families and the capabilities of society and the state, a certain level of support is also guaranteed to non-working mothers, as well as support for families raising underage children of various age, and not exclusively children of early age, at home. In this area, the legislature, taking account of various social, demographic, and economic factors, *inter alia*, the material and financial possibilities of the state, has broad discretion to choose concrete instruments of protection and support.

In addition, in this context, it needs to be noted that the self-obligation of the state to protect and care for family, motherhood, fatherhood, and childhood, which is consolidated in Paragraph 2 of Article 38 of the Constitution, may not be interpreted in isolation from, *inter alia*, the right and duty of parents, which are consolidated in Paragraph 6 of this article, to bring up their children to be honest people and faithful citizens and to support them until they reach the age of majority; this implies that it is parents who are, first of all, responsible for raising and bringing up their children as well as supporting them until they reach the age of majority.

The state care and support for families raising and bringing up children at home, *inter alia*, leave granted for raising and bringing up children at home and financial support during such leave (Paragraph 1 of Article 39 of the Constitution)

The Constitutional Court's ruling of 27 February 2012

Paragraph 1 of Article 39 of the Constitution prescribes: “The State shall take care of families raising and bringing up children at home, and shall render them support according to the procedure established by law.”

The state guarantee of care and support for families raising and bringing up children at home is consolidated in Paragraph 1 of Article 39 of the Constitution. The legislature may establish various forms of the implementation the said guarantee, *inter alia*: provide for the rendering of financial support; ensure the possibility for working parents to make use of leave for raising and upbringing children at home; develop flexible forms of work that create favourable conditions for working parents to combine raising and upbringing children at home and work (professional) activities; give an opportunity not only to the mother, but also to the father to raise and bring up a child at home, while in their absence – to give such a possibility to other working members of the family.

The guarantee of state care and support for families raising and bringing up children at home, which is consolidated in Paragraph 1 of Article 39 of the Constitution, as well as the obligation of the state of a more general character, stemming from Paragraph 2 of Article 38 thereof, to protect and care for family, motherhood, fatherhood, and childhood, may not be interpreted in isolation from the right and duty of the parents, as consolidated in Paragraph 6 of Article 38 of the Constitution, to bring up their children to be honest people and faithful citizens and to support them until they reach the age of majority; as mentioned before, it is parents who are, first of all, responsible for raising and bringing up their children as well as supporting them until they reach the age of majority, whereas the duty of the state is to provide support, within its capabilities, to families raising and bringing up children at home.

While taking account of the fact that state support for families that raise and bring up children at home may be rendered, *inter alia*, as social assistance in cases provided for under laws, which is guaranteed in Article 52 of the Constitution, it also needs to be noted that, as it has been held in the acts of the Constitutional Court more than once, the principle of solidarity in civil society does not deny personal responsibility for one's own fate; therefore, the legal regulation of social security should be such so as to create the preconditions for each member of society to take care of one's own welfare, but not to rely solely on social security guaranteed by the state (rulings of 12 March 1997, 25 November 2002, 3 December 2003, 5 March 2004, 26 September 2007, and 2 September 2009, the decision of 20 April 2010, and the ruling of 6 February 2012); social assistance should not create any preconditions for a person to decide not to seek higher income and not to search for possibilities of ensuring to oneself and one's family by one's own effort the living conditions that are in line with human dignity; social assistance should not become a privilege (rulings of 5 March 2004 and 2 September 2009, the decision of 20 April 2010, and the ruling of 6 February 2012); the recognition of mutual responsibility of a person and society is important in ensuring social harmony, guaranteeing freedom of a person and the possibility of protecting oneself from difficulties that could not be overcome by a person alone (rulings of 12 March 1997 and 26 September 2007, the decision of 20 April 2010, and the ruling of 6 February 2012). Thus, the Constitution does not prohibit the legislature from establishing, by means of a law, such grounds and conditions for providing social assistance, as well as such amounts of social assistance, that would encourage everyone to attempt, to the extent possible and, first of all, by themselves, to take care of their own and their family welfare, as well as to contribute to the welfare of all society (ruling of 5 March 2004).

As it was held in the Constitutional Court's ruling of 5 March 2004, the Constitution does not *expressis verbis* establish any grounds, conditions, terms, and amounts of giving support for families that raise and bring up children at home; this should be established by the legislature in compliance with the norms and principles of the Constitution; the capabilities of society and the state should be taken into account when regulating, by means of a law, the relationships of support given to families that raise and bring up children at home; the legislature has broad discretion in this field; however, it is inadmissible to link the support given by the state to a family with such circumstances (conditions) that would artificially complicate the receipt of such support.

The legislature may choose various forms of care and support for families that raise and bring up children at home, the conditions of rendering such care and support, etc.; however, while implementing its discretion, the legislature is not allowed to deny, in general, the essence of the guarantee consolidated in Paragraph 1 of Article 39 of the Constitution and the obligation of the state stemming from Paragraph 2 of Article 38 thereof to protect and care for the constitutional values – family, motherhood, fatherhood, and childhood.

... under Paragraph 1 of Article 39 of the Constitution, the legislature, while implementing its discretion to choose various forms of care and support for families that raise and bring up children at home, is allowed, after it takes account of a special need of children of early age for protection and supervision, to establish such a legal regulation that would create conditions for at least one working parent (in their absence – for another working member of the family) to raise and bring up a child at home for some time without being engaged in work (professional) activities (or by combining such activities and raising and bringing up a child) by receiving the respective support from the state during this time period. The law may

also provide for leave of other types for working parents, *inter alia*, leave given to fathers from the moment of childbirth.

The Constitution does not establish any grounds and conditions for giving leave for raising and bringing up children at home, or the length of such leave, or any amounts of financial support to be rendered during such leave – it must be established by the legislature by paying regard to the norms and principles of the Constitution (*inter alia*, the constitutional imperatives of a state under the rule of law, justice, reasonableness, proportionality, the protection of acquired rights and legitimate expectations, legal certainty and legal security, the equality of rights, a balance among constitutional values, and social harmony).

The legislature also has discretion to choose the sources from which the support for families raising and bringing up children at home will be funded: such support, *inter alia*, may be funded from the state budget; in addition, such a legal regulation may be established whereby the rendering of the said support would be based on social insurance; or a different model of funding such support may be chosen.

... having chosen such a form of the care and support (guaranteed in Paragraph 1 of Article 39 of the Constitution) as leave for raising and bringing up children at home, the legislature, while taking account of the purpose of such leave, which is the creation of possibilities for parents to raise and bring up children at home for some time without being engaged in work (professional) activities, as well as of the purpose of financial support to be rendered during such leave, which is compensation, within the capabilities of the state, of all lost income or part thereof, may establish such a legal regulation whereby the said support would be rendered while taking into consideration other income (received for work performed at the time of the said leave) of the persons making use of such leave. At the same time, it needs to be noted that it is not allowed to establish any such a legal regulation whereby the income received for work performed not during the said leave, but at some other time, would influence the amount of the financial support rendered at the time of leave for raising and bringing up children at home, since the aforesaid work does not deny the purpose of such leave in any way.

Granting working mothers paid leave before and after childbirth (Paragraph 2 of Article 39 of the Constitution)

The Constitutional Court's ruling of 27 February 2012

Paragraph 2 of Article 39 of the Constitution prescribes: “The law shall make a provision for working mothers to be granted paid leave before and after childbirth, as well as favourable working conditions and other concessions.”

Paragraph 2 of Article 39 of the Constitution establishes, *inter alia*, the constitutional guarantee of paid leave before and after childbirth for working mothers, by taking account of a special condition and need of healthcare of women for some time before and after childbirth and of a special link between mother and child for some time after childbirth. The purpose of this constitutional guarantee is to secure the protection of the physiological condition of a pregnant woman and a woman after childbirth, to secure the special link between mother and child during the first weeks of life of the child, by creating the possibility for a working woman to withdraw, for a reasonable time, from her work (professional) activities before and after childbirth.

It needs to be noted that, when account is taken of this constitutional purpose, paid leave before and after childbirth to working mothers is a specific constitutional institution of the protection of motherhood and childhood. The paid leave of a reasonable length of time before and after childbirth to working mothers guaranteed under Paragraph 2 of Article 39 of the Constitution implies that the legislature, in regulating the implementation of the right to this leave and taking into consideration the constitutional purpose thereof, while paying regard to other norms and principles of the Constitution (*inter alia*, the constitutional imperatives of a state under the rule of law, justice, reasonableness, and the equality of rights), must establish, *inter alia*, the conditions for giving such leave, a reasonable (minimum and maximum) length of such leave, as well as such a legal regulation that would secure, at the time of this leave, the payment of

benefits the amount of which would comply with the average remuneration received during a reasonable time prior to such leave.

The legislature has the discretion to choose the sources from which leave for working mothers before and after childbirth will be paid: such leave, *inter alia*, may be funded from the state budget; in addition, such a legal regulation may be established whereby the funding of the said leave would be based on social insurance, or a different model of funding such leave may be chosen.

... under the Constitution, the legislature, while taking account of the constitutional purpose of paid leave before and after childbirth, may establish such a legal regulation whereby such leave would be paid by taking account of other income (received for work performed at the time of the said leave) of the women on such leave. At the same time, it needs to be noted that it is not allowed to establish any such a legal regulation whereby income received for work performed not during the said leave, but at some other time, would influence the payment for leave before and after childbirth, since the aforesaid work does not deny the purpose of such leave in any way.

It needs to be emphasised that, while regulating the right of paid leave before and after childbirth, which is guaranteed in Paragraph 2 of Article 39 of the Constitution, the legislature must take into account, *inter alia*, the particularities (which may be of importance for the possibilities of women concerned to make use of such a right) of the work (professional) activities of women engaged in work or business.

State financial support rendered during leave for raising and bringing up children at home (Paragraph 1 of Article 39 of the Constitution)

The Constitutional Court's ruling of 5 March 2013

... financial support rendered during leave granted for raising and bringing up children at home (one of the forms of the care and support guaranteed by the state under Paragraph 1 of Article 39 of the Constitution for families raising and bringing up children at home, where the said form is chosen by the legislature and may be implemented, *inter alia*, as social assistance guaranteed by Article 52 of the Constitution in the cases provided for under laws), by its nature, temporary (time-limited) character, and purpose, differs from the pensions guaranteed by Article 52 of the Constitution, as well as from other benefits of pension provision provided for by means of laws, where the right to the said benefits is related to the protection of ownership rights as consolidated in Article 23 of the Constitution. The said difference is particularly distinct in the light of the fact that the financial support provided for under the law is a targeted one, i.e. it should be linked to a concrete period of raising and bringing up a child at home, as well as to the support of such an amount that depends on the capabilities of the state and society.

Reducing financial support rendered during leave for raising and bringing up children at home upon the emergence of a particularly difficult economic and financial situation in the state

The Constitutional Court's ruling of 5 March 2013

... when providing support for families raising and bringing up children at home, the state must observe the constitutional principles of the protection of legitimate expectations, legal certainty, legal security, the equality of rights, and proportionality also in the event of the emergence of a particularly difficult economic and financial situation in the state. Persons who, under the law, have acquired the right to financial support in the amount established under the law during leave granted for raising and bringing up children at home have no legal expectation that support will not be reduced on the emergence of a particularly difficult economic and financial situation in the state; however, they have the legitimate expectation that in the event of the reduction of the said support on the emergence of a particularly difficult economic and financial situation in the state, *inter alia*, the constitutional principles of the equality of rights and proportionality will be observed.

It should also be noted that, in exceptional cases, while reducing, on the emergence of a particularly difficult economic and financial situation in the state, the financial support rendered in an established amount during leave granted for raising and bringing up children at home, the legislature is under the duty to establish an even and non-discriminatory extent of the reduction of such granted financial support,

ensuring that the said support is reduced so that the proportions of the previously established (prior to the emergence of a particularly difficult economic and financial situation in the state) amounts of that support would not be violated.

It should be noted that, while reducing, on the emergence of a particularly difficult economic and financial situation in the state, the funding of various areas financed by the state, *inter alia*, the budgetary funding of all state institutions and financial support rendered during leave granted for raising and bringing up children at home, where such financial support is calculated on the basis of the work remuneration of parents, the legislature is also under the obligation to stipulate that the work remuneration of persons who, under the law, have the right to receive the said support and who are remunerated from state funds would not be reduced to a greater extent if compared with the aforesaid support.

[...]

... the particularities of financial support rendered during leave granted for raising and bringing up children at home, i.e. its nature, temporary (time-limited) character, and purpose, implies that, on the emergence of a particularly difficult economic and financial situation in the state and in the event of the necessity, arising due to the said situation, to temporarily reduce the aforesaid support with a view to ensuring certain vitally important interests of society and the state, as well as protecting other constitutional values, no duty arises for the legislature to provide for compensation for the losses incurred as a result of the reduction of the aforesaid support, while the reduction itself does not deny the essence of the right acquired under the law to the financial support in the amount provided for under the law during leave granted for raising and bringing up children at home.

The state care and support for families raising and bringing up children at home, *inter alia*, leave granted for raising and bringing up children at home and financial support provided during such leave (Paragraph 1 of Article 39 of the Constitution)

The Constitutional Court's ruling of 24 January 2018

... state support for families raising and bringing up children at home, which is guaranteed under Paragraph 1 of Article 39 of the Constitution and may be provided in various forms chosen by the legislature, *inter alia*, by providing for leave granted to working parents for raising and bringing up children at home, as well as for financial support granted during this leave, substantially differs from the guarantee of paid leave granted before and after childbirth to working mothers, as consolidated in Paragraph 2 of the said article. Paragraph 1 of Article 39 of the Constitution does not consolidate the duty for the legislature to establish specifically such a form of support as leave for raising and bringing up children at home; nor does it establish the amounts of financial support provided during this leave.

[...]

... having chosen to provide for leave granted for raising and bringing up children at home as one of the forms of state support for families, as guaranteed in Paragraph 1 of Article 39 of the Constitution, the legislature has, under the Constitution, broad discretion to establish the grounds and conditions for granting this leave, its duration, and the amounts of financial support provided during this leave; the legislature, *inter alia*, is not obliged to prescribe such an amount of this support that would correspond to the average remuneration received before such leave by the recipient of this support.

The Constitutional Court has noted that state support for families raising and bringing up children at home may be rendered, *inter alia*, as social assistance in cases provided for by law, which is guaranteed in Article 52 of the Constitution (*inter alia*, the rulings of 27 February 2012 and 5 March 2013).

[...]

... seeking to ensure the financial stability of the state social insurance system and following the constitutional principle of social solidarity, as well as distributing, to a certain extent, the burden of the implementation of the obligations stemming for the state from Article 52 of the Constitution among members of society, the legislature has the duty to establish such a relation between the contribution made (state social insurance contributions paid) by persons participating in this system and the amount of financial support (benefits) granted to persons that would ensure a balance between the interests of persons

who finance the state social insurance system by paying their contributions and persons who receive benefit from this system.

Paid leave of working mothers before and after childbirth (Paragraph 2 of Article 39 of the Constitution)

The Constitutional Court's ruling of 19 December 2018

The constitutional guarantee of paid leave before and after childbirth for working mothers, which is consolidated in Paragraph 2 of Article 39 of the Constitution ... should be interpreted with reference to Paragraph 1 of Article 48 of the Constitution, which, among other things, provides that everyone may freely choose an occupation or business.

[...]

In view of this, under Paragraph 2 of Article 39 of the Constitution, the guarantee of paid leave before and after childbirth may be applied not only to those mothers who, in implementing their constitutional right to work, have chosen an occupation under an employment contract or have entered state service. ... having chosen the model of payment for paid leave before and after childbirth based on social insurance and having established that this insurance covers not only persons who have employment or state service relationships, but also persons engaged in other working (professional) activities, *inter alia*, self-employed persons, the legislature must, under Paragraph 2 of Article 39 of the Constitution, also ensure the constitutional guarantee of paid leave before and after childbirth for those mothers who are self-employed. It should also be noted that such a legal regulation must comply with the norms and principles of the Constitution, *inter alia*, the constitutional principles of the equality of the rights of persons and justice.

[...]

... once the legislature has chosen the model of payment for paid leave before and after childbirth (provided for in Paragraph 2 of Article 39 of the Constitution) based on social insurance and has established that this insurance covers not only persons who have employment or state service relationships, but also self-employed persons, the principle of the equality of the rights of persons, which is consolidated in Article 29 of the Constitution, and the constitutional principle of justice give rise to the prohibition to differently treat mothers who have employment or state service relationships and those who do not have such relationships, *inter alia*, self-employed mothers, who have contributed to social insurance to the same extent established under the law (have paid the respective social insurance contributions or these contributions have been paid for them) ...

The obligation of the state to ensure the protection of family, motherhood, fatherhood, and childhood (Paragraph 2 of Article 38 of the Constitution); the discretion of the state, stemming from the said obligation, to provide mothers other than those who are working with the same protection as consolidated in Paragraph 2 of Article 39 of the Constitution

The Constitutional Court's ruling of 19 December 2018

Paragraph 2 of Article 39 of the Constitution, under which working mothers are guaranteed paid leave before and after childbirth, as well as favourable working conditions and other concessions, expresses, from a certain aspect, the constitutional obligation of the state, which is consolidated in Paragraph 2 of Article 38 of the Constitution, to protect and take care, among others, of family, motherhood, and childhood (*inter alia*, the ruling of 27 February 2012).

The Constitutional Court has held on more than one occasion that the state protection and care guaranteed in Paragraph 2 of Article 38 of the Constitution is implemented in various ways by creating a favourable environment for family, motherhood, fatherhood, and childhood as constitutional values; in the course of implementing the constitutional obligation of the state to create a favourable environment for family, motherhood, fatherhood, and childhood, various forms of the protection and support thereof may

be developed; in this area, the legislature, taking account of various social, demographic, and economic factors, *inter alia*, the material and financial possibilities of the state, has broad discretion to choose concrete instruments of protection and support (*inter alia*, the rulings of 27 February 2012 and 14 December 2012).

... the obligation of the state to protect and take care of motherhood and childhood, which is consolidated in Paragraph 2 of Article 38 of the Constitution, implies the discretion of the state, with regard to its financial and material possibilities, to provide the same guarantee as consolidated in Paragraph 2 of Article 39 of the Constitution for mothers other than those who are working mothers; having chosen the model of payment for paid leave before and after childbirth based on social insurance, the legislature may also grant such a guarantee to those mothers who have contributed to social insurance to the extent provided for under the law (have paid the respective social insurance contributions or these contributions have been paid for them) but ceased their working (professional) activity before the day on which, in accordance with the procedure established in laws, they would become entitled to paid leave before and after childbirth. It should also be noted that such a legal regulation must also comply with the norms and principles of the Constitution, *inter alia*, the constitutional principles of the equality of the rights of persons and justice.

[...]

... once the legislature has chosen the model of payment for paid leave before and after childbirth (provided for in Paragraph 2 of Article 39 of the Constitution) based on social insurance and has established that this insurance covers not only persons who have employment or state service relationships, but also self-employed persons, the principle of the equality of the rights of persons, which is consolidated in Article 29 of the Constitution, and the constitutional principle of justice give rise to the prohibition to differently treat mothers who have employment or state service relationships and those who do not have such relationships, *inter alia*, self-employed mothers, who have contributed to social insurance to the same extent established in the law (have paid the respective social insurance contributions or these contributions have been paid for them); this also applies *mutatis mutandis* to those mothers who ceased their working (professional) activity before the day on which, in accordance with the procedure established in laws, they would become entitled to paid leave before and after childbirth where, in implementing its discretion stemming from the obligation of the state to protect and take care of motherhood and childhood, which is consolidated in Paragraph 2 of Article 38 of the Constitution, the legislature grants the said mothers the same guarantee as consolidated in Paragraph 2 of Article 39 of the Constitution.

The obligation of the state to ensure the protection of family, motherhood, fatherhood, and childhood; the constitutional concept of the family; the constitutional concept of marriage (Paragraphs 1–3 of Article 38 of the Constitution)

The Constitutional Court's ruling of 11 January 2019

Paragraphs 1 and 2 of Article 38 of the Constitution prescribe:

“The family shall be the basis of society and the State.

Family, motherhood, fatherhood, and childhood shall be under the protection and care of the State.”

... Paragraph 3 of Article 38 of the Constitution stipulates: “Marriage shall be concluded upon the free mutual consent of man and woman.”

The Constitutional Court has held that Paragraphs 1 and 2 of Article 38 of the Constitution consolidate the constitutional principles of the most general nature; these provisions express the obligation of the state to establish such a legal regulation that would ensure that family, motherhood, fatherhood, and childhood, as constitutional values, are fostered and protected in all ways possible (*inter alia*, the rulings of 28 September 2011, 27 February 2012, and 22 September 2015).

In its ruling of 28 September 2011, the Constitutional Court held that the constitutional concept of the family may not be derived solely from the institution of marriage, consolidated in Paragraph 3 of Article 38 of the Constitution; marriage is one of the grounds of the constitutional institution of the family for the creation of family relationships; however, this does not mean that the Constitution, *inter alia*, Paragraph 1 of Article 38 thereof, does not protect and defend families other than those founded on the basis of

marriage; the constitutional concept of the family is based on mutual responsibility between family members, understanding, emotional affection, assistance, and similar bonds, as well as on the voluntary determination to take on certain rights and duties, i.e. the said concept is based on the content of relationships, whereas the form of expression of these relationships has no essential significance for the constitutional concept of the family; the duty, stemming from Paragraph 1 of Article 38 of the Constitution, for the state to establish, by means of laws and other legal acts, a legal regulation that would ensure the protection of the family as a constitutional value implies the duty of the state not only to establish such a legal regulation that, *inter alia*, would create the preconditions for the proper functioning of families, strengthen family relationships, and defend the rights and legitimate interests of family members, but also to regulate, by means of laws and other legal acts, family relationships in such a way that no preconditions would be created for discrimination against participants in family relationships (as, for instance, discrimination against a man and a woman who live together without having registered their union as a marriage, their children (adopted children), single parents raising their child (adopted child), etc.).

In this context, it should be noted that Paragraph 3 of Article 38 of the Constitution consolidates the constitutional concept of marriage concluded by free mutual consent of a man and a woman. It needs to be emphasised that a different concept of marriage may not be consolidated in the laws of the Republic of Lithuania unless Paragraph 3 of Article 38 of the Constitution is amended accordingly.

The Constitutional Court has noted that marriage is one of the grounds of the constitutional institution of family for the creation of family relationships; it is a historically established family model, which has undoubtedly had an exceptional value in the life of society and ensures the viability of the Nation and the state, as well as their historical survival (ruling of 28 September 2011).

... unlike the constitutional concept of marriage, the constitutional concept of the family, among other things, is neutral in terms of gender. Under Paragraphs 1 and 2 of Article 38 of the Constitution, interpreted in conjunction with the principle of the equality of persons and the prohibition of discrimination, as established in Article 29 of the Constitution, the Constitution protects and defends all families that meet the constitutional concept of the family, which is based on the content of permanent or long-lasting relationships between family members, i.e. mutual responsibility between family members, understanding, emotional affection, assistance, and similar bonds, as well as on the voluntary determination to take on certain rights and duties.

On the other hand, this does not mean that the Constitution, *inter alia*, Paragraph 2 of Article 38 thereof, under which motherhood, fatherhood, and childhood are also under the protection and care of the state, precludes the establishment of a differentiated legal regulation governing family care and family support by the state where objective and constitutionally justifiable criteria are taken into account.

The right to reunification for a family in the context of the free movement of persons within the European Union and migration (Paragraphs 2 and 3 of Article 21, Paragraphs 1 and 4 of Article 22, Articles 29 and 32, and Paragraphs 1 and 2 of Article 38 of the Constitution and the Constitutional Act on Membership of the Republic of Lithuania in the European Union)

The Constitutional Court's ruling of 11 January 2019

... under the Constitution, *inter alia*, the constitutional principle of a state under the rule of law, the legal regulation governing family reunification in the context of the free movement of persons within the EU and migration must be based on the principle of respect for human dignity and the private and family life of a person, as well as the principle of the equality of the rights of persons. When establishing this legal regulation, under the Constitution, *inter alia*, the constitutional principle of a state under the rule of law, the legislature must also pay regard to the specificity of the relationships in question, *inter alia*, the specificity of the free movement of persons within the EU and migration, *inter alia*, to the fact that the family of a citizen of the Republic of Lithuania, of a citizen of any other EU Member State, or of a third-country national lawfully residing in Lithuania, whose family members wish to enter Lithuania and reside there for reasons of family reunification, may have been founded not only in the Republic of Lithuania, but

also under the law of another EU Member State or under that of a third country, which may also allow marriages or registered partnerships, *inter alia*, between two persons of the same sex.

... under the Constitution, *inter alia* ... the provisions of Paragraphs 2 and 3 of Article 21, Paragraphs 1 and 4 of Article 22, Article 29, and Paragraphs 1 and 2 of Article 38 thereof, and the constitutional principle of a state under the rule of law, the legislature must lay down such a legal regulation related to the free movement of persons within the EU and migration that would provide for the right to reunification for a family founded by two same-sex persons in another state through a legally concluded marriage or registered partnership, i.e. the right of a foreign national to enter Lithuania and reside there together with his/her family member – a citizen of the Republic of Lithuania or a foreign national lawfully residing in Lithuania, with whom a marriage or registered partnership has lawfully been concluded in another state. With respect to a foreign national who is a family member of a citizen of the Republic of Lithuania or a family member of a non-national Lithuanian entering Lithuania for residence, with whom the foreign national has lawfully concluded a marriage or registered partnership in another state, the said duty of the legislature also arises from the provisions of Article 32 of the Constitution.

It should also be noted that the duty of the State of Lithuania to consolidate the said right to reunification for a family created on the basis of a marriage or registered partnership lawfully concluded by two persons of the same sex in another EU country, i.e. the right of a citizen of a country other than EU Member State to enter Lithuania and reside there together with a citizen of the EU, *inter alia*, a citizen of the Republic of Lithuania, with whom a marriage or registered partnership has lawfully been concluded in another EU Member State, also arises from the constitutional imperative of full participation by the Republic of Lithuania in the EU and Article 1 of the Constitutional Act on Membership of the Republic of Lithuania in the European Union. ... the constitutional provisions related to the free movement of EU citizens, *inter alia*, citizens of the Republic of Lithuania, within the EU, *inter alia*, the Republic of Lithuania, should also be interpreted in the light of the respective EU legal provisions.

... it should be emphasised that, under the Constitution, the exercise of the right to reunification by a family founded by two persons, *inter alia*, same-sex persons, through a marriage or registered partnership lawfully concluded in another state is not absolute. The right of a foreign national to enter Lithuania and reside there together with his/her family member – a citizen of the Republic of Lithuania or a foreign national lawfully residing in Lithuania, with whom a marriage or registered partnership has lawfully been concluded in another state, under the Constitution, may be limited by means of a law where necessary in a democratic society for reasons of national or public security, public order, the protection of human health, or similar constitutionally important objectives; at the same time, regard must be paid to the constitutional principles of the equality of the rights of persons and proportionality.

It should be emphasised that the said limitations must be necessary in order to reach the constitutionally important objectives, specifically, in a democratic society, where respect should be paid to the human dignity of everyone without discriminating, *inter alia*, on the grounds of gender identity and/or sexual orientation. ... in a democratic state under the rule of law, the attitudes or stereotypes prevailing in a certain period of time among the majority of members of society may not, based on the constitutionally important objectives, *inter alia*, ensuring public order, serve as constitutionally justifiable grounds for discriminating against persons solely on the basis of their gender identity and/or sexual orientation. In other words, the constitutionally important objectives may not serve as a justification for a limitation on exercising the right to reunification by a family founded by two persons, *inter alia*, same-sex persons, in another state through a lawfully concluded marriage or registered partnership if such a limitation is incompatible with Article 29 of the Constitution, under which ... one of the forms of prohibited discrimination is the restriction of the rights of a person on the grounds of his/her gender identity and/or sexual orientation, or with Paragraphs 2 and 3 of Article 21 of the Constitution, which protect human dignity and prohibit its degrading.

Taking account of this, it should be held that, although the objective to protect the constitutional concept of marriage, as concluded upon the free mutual consent of a man and a woman, as well as the historically established model of the family, which is based on this concept, may be considered

constitutionally important, under the Constitution, such an objective may not serve as a justification for a legal regulation whereby, solely on the grounds of gender identity and/or sexual orientation, a foreign national would not be allowed to enter Lithuania and reside there together with his/her family member – a citizen of the Republic of Lithuania or a foreign national lawfully residing in Lithuania, with whom a marriage or registered partnership has lawfully been concluded in another state, i.e. such a legal regulation whereby a foreign national would be allowed to enter Lithuania and reside there exclusively in cases where he/she has lawfully concluded a marriage or registered partnership in another state with an opposite-sex citizen of the Republic of Lithuania or an opposite-sex foreign national lawfully residing in Lithuania.

In this context, it should be noted that the above-mentioned duty, stemming from the Constitution, for the legislature to lay down such a legal regulation related to the free movement of persons within the EU and migration that would provide for the right to reunification for a family founded in another state by two same-sex persons through a legally concluded marriage or registered partnership may not be interpreted as changing the concept of marriage consolidated in Paragraph 3 of Article 38 of the Constitution.

The obligation of the state to protect and take care of childhood; the constitutional imperative of the priority of the interests of the child; the duty of parents to support their children (Paragraphs 1, 2, and 6 of Article 38 and Paragraphs 1–3 of Article 39 of the Constitution)

The Constitutional Court's ruling of 8 November 2019

Article 38 of the Constitution, *inter alia*, prescribes:

“The family shall be the basis of society and the State.” (Paragraph 1)

Family, motherhood, fatherhood, and childhood shall be under the protection and care of the State.” (Paragraph 2)

“The right and duty of parents shall be to bring up their children to be honest people and faithful citizens, and to support them until they reach the age of majority.” (Paragraph 6)

As held by the Constitutional Court, Paragraphs 1 and 2 of Article 38 of the Constitution consolidate the constitutional principles of the general nature; these provisions express the obligation of the state, by means of laws or other legal acts, to establish such a legal regulation that would ensure that family, motherhood, fatherhood, and childhood, as constitutional values, are fostered and protected in all ways possible (*inter alia*, the rulings of 27 February 2012, 22 September 2015, and 24 January 2018).

The Constitutional Court has noted that the state protection and care guaranteed in Paragraph 2 of Article 38 of the Constitution is implemented in various ways by creating a favourable environment for family, motherhood, fatherhood, and childhood as constitutional values (rulings of 27 February 2012 and 24 January 2018).

... childhood is consolidated in Paragraph 2 of Article 38 of the Constitution as a particularly protected and fostered constitutional value, in view that childhood is a special period in the life of an individual, during which the development of the personality, insofar as this development is linked to physical, mental, and social maturity, takes place, as well as in view that children constitute a socially sensitive and particularly vulnerable part of society due to the particularities of their developing personality (*inter alia*, their insufficient physical and social maturity). It should be noted that care by the state for childhood, as a particularly protected and fostered constitutional value, is an important precondition for implementing the striving, consolidated in the Preamble to the Constitution, for an open, just, and harmonious civil society. Therefore, under Paragraph 2 of Article 38 of the Constitution, specific protection and support is necessary for children, so that the conditions are created for their healthy and full development, *inter alia*, for their growing up to be honest people and faithful citizens.

The Constitutional Court also noted that the general obligation of the state, stemming from Paragraph 2 of Article 38 of the Constitution, to protect and take care of family, motherhood, fatherhood, and childhood may not be interpreted in isolation from the right and duty of the parents, as consolidated in Paragraph 6 of this article, to bring up their children to be honest people and faithful citizens and to support them until they reach the age of majority; it is parents who are, first of all, responsible for raising and bringing up their children, as well as supporting them until they reach the age of majority; whereas the duty of the state is to

provide support, within its capabilities, for families raising and bringing up children at home (rulings of 27 February 2012 and 24 January 2018).

It should be noted that, under Paragraph 6 of Article 38 of the Constitution, parents have the duty to support their children until they reach the age of majority. As the Constitutional Court noted in its ruling of 7 June 2007, the provision of Paragraph 6 of Article 38 of the Constitution is designed to regulate the relationships between parents and their under-age children; it does not regulate the relationships between parents and their children after the children reach the age of majority. In this context, the Constitutional Court also noted that Paragraph 6 of Article 38 of the Constitution may not be interpreted as meaning that, purportedly, the legislature cannot, in general, establish, by means of a law, the duty of parents to support their children of the age of majority if they need support, *inter alia*, in order that they could acquire the respective (as, for instance, secondary or secondary together with professional) education if such a duty may be based on other provisions of the Constitution; such a duty of parents should be derived not only from laws, but also from the entirety of the provisions of the Constitution, *inter alia*, from the constitutional consolidation of the value of relationships between parents and children, the striving for a just and harmonious civil society, and the social orientation of the state (ruling of 7 June 2007).

In view of the above, it should be pointed out that the provisions of the Constitution, *inter alia*, Paragraph 2 of Article 38 thereof, the striving for an open, just, and harmonious civil society, as established in the Preamble to the Constitution, and the constitutional principle of the social orientation of the state, imply the possibility of establishing, by means of a law, the duty of parents also to support their children who have reached the age of majority in cases where they are unable to take care of themselves and support themselves because of their disability. It should be noted at the same time that the duty of parents, as consolidated in Paragraph 6 of Article 38 of the Constitution, to support their children until they reach the age of majority, in certain cases where the child is able to exercise all his/her rights and fulfil all his/her duties independently (for instance, in the case of the emancipation of a person as provided for under the law), may end before the child reaches the age of majority established under the law.

In its rulings of 27 February 2012 and 24 January 2018, when interpreting, *inter alia*, Paragraph 2 of Article 38 of the Constitution, the Constitutional Court noted that the constitutional obligation of the state to protect and take care of family, motherhood, fatherhood and childhood, as a general principle, is from certain aspects also expressed in other provisions of the Constitution, *inter alia*, in Paragraph 1 of Article 39, wherein state care and support is guaranteed to families raising and bringing up children at home, and Paragraph 2 of the same article, wherein working mothers are guaranteed paid leave before and after childbirth, as well as favourable working conditions and other concessions; however, the imperative consolidated in Paragraph 2 of Article 38 of the Constitution cannot be interpreted as including only the guarantees consolidated in Paragraphs 1 and 2 of Article 39 of the Constitution for the protection of the above-mentioned constitutional values – in the course of implementing the constitutional obligation of the state to create a favourable environment for family, motherhood, fatherhood, and childhood, various forms of the protection and support thereof may be developed; the legislature, taking account of various social, demographic, and economic factors, *inter alia*, the material and financial possibilities of the state, has broad discretion to choose concrete instruments of protection and support.

The obligation of the state to protect and take care of childhood, which is consolidated in Paragraph 2 of Article 38 of the Constitution, should be interpreted in conjunction with Paragraph 3 of Article 39, which stipulates the following: “Under-age children shall be protected by law.”

The provision of Paragraph 3 of Article 39 of the Constitution means that sufficient and effective protection must be guaranteed for the rights and legitimate interests of under-age children, as well as that the legislature and other state institutions, when regulating the situation of under-age children and other relationships by means of legal acts, must respect the rights and legitimate interests of under-age children (rulings of 13 June 2000 and 22 September 2015).

In this context, it should be noted that the constitutional imperative of the priority of the interests of the child stems from the Constitution, *inter alia*, from Paragraph 2 of Article 38 thereof, which, as mentioned before, consolidates childhood as a particularly protected and fostered constitutional value, also

from Paragraph 3 of Article 39 of the Constitution, under which the state must, by means of a law, guarantee the sufficient and effective protection of the rights and legitimate interests of under-age children, as well as from the striving, consolidated in the Preamble to the Constitution, for an open, just, and harmonious civil society. This imperative implies the duty of the state to ensure that account is, first of all, taken of the interests of the child and no preconditions are created for violating these interests in the course of adopting laws and other legal acts, as well as in the course of applying them and deciding on other issues related to the child.

... under Paragraph 2 of Article 38 and Paragraph 3 of Article 39 of the Constitution, the state has the duty to defend the interests of children in cases where their parents (one of their parents) fail(s) to fulfil their constitutionally consolidated duties, *inter alia*, the duty to support their children, which is consolidated in the Constitution, *inter alia*, Paragraph 6 of Article 38 thereof. Under the Constitution, it is also allowed to establish, by means of a law, such a form of ensuring the right of the child to maintenance as the provision of financial support by the state for children who are not maintained by their parents (one of their parents). However, it should be emphasised that, once the obligation of the state to provide children with the said financial support has been established by means of a law, no preconditions may be created for releasing parents from their constitutional duty to support their children, i.e. a law must lay down the duty of the state to recover the funds spent on the provision of this support from parents who have failed to fulfil their constitutional duty to support their children.

At the same time, it should be noted that, when establishing, by means of a law, such a form of ensuring the right of the child to maintenance as the provision of financial support by the state for children who are not maintained by their parents (one of their parents), as well as when establishing the conditions for the provision of this support, the legislature must pay regard to the constitutional imperative of the priority of the interests of the child, which stems from the Constitution, *inter alia*, Paragraph 2 of Article 38 and Paragraph 3 of Article 39 thereof, and which, as mentioned before, implies the duty of the state to ensure that account is, first of all, taken of the interests of the child and no preconditions are created for violating these interests in the course of adopting laws and other legal acts, as well as in the course of applying them and deciding on other issues related to the child.

2.4.3. Cultural rights

2.4.3.1. The right to education

2.4.3.1.1. General provisions

The duty of the state to ensure free-of-charge education accessible to everyone in state or municipal schools of general education, vocational schools, and schools of further education (Paragraphs 1 and 2 of Article 41 of the Constitution); financing the additional education of children

The Constitutional Court's ruling of 13 June 2000

Paragraph 1 of Article 41 of the Constitution provides that education is compulsory for persons under the age of 16, while Paragraph 2 thereof provides that education at state and municipal schools of general education, vocational schools, and schools of further education is free of charge. These constitutional norms mean that the state (its institutions) have the duty to ensure that all persons under the age of 16 have real possibilities of acquiring free education in state and municipal schools of general education, vocational schools, and schools of further education and that studies in these establishments are equally accessible to everyone.

Teaching is a constituent part of education. Education is a very diverse process determined by many factors: the influence of the family, the activities of both teachers and establishments of teaching and education, social and family values, social, demographic, economic, political, and cultural processes taking place in society, financial, organisational, and infrastructural possibilities of the state, etc. The purposefulness, quality, and diversity of education must be guaranteed not only by the state and municipal

establishments of teaching and education, which are pointed out in the Constitution, but also by parents (legal guardians), who have the constitutional right to take care of the religious and moral education of their children (wards) in conformity with their own convictions and who have the constitutional duty to bring them up to be honest people and faithful citizens, as well as to support them until they reach the age of majority. Implementing these constitutional rights and freedoms, parents (legal guardians) may not refuse to cover part of the expenses for the education of their children.

... additional education is related, first of all, neither to general, vocational, or further education, which is free under the Constitution, nor to syllabi (curricula) prepared and approved (confirmed) by competent state and municipal institutions or by state or municipal establishments of teaching and education, but rather to the wish of pupils (or that of their parents or legal guardians). Therefore, the provision that instruction at establishments of additional education is paid in part is reasonable. This part of the expenses for education may be borne by the state, but it is not obligated to do so. On the other hand, this provision does not mean that state or municipal institutions, taking account of the needs of society (residents) and state (municipal) financial and organisational possibilities, may not establish and maintain or support in any other way state (municipal) establishments of additional education.

The duty of the state to supervise the activity of establishments of teaching and education (Paragraph 4 of Article 40 of the Constitution)

The Constitutional Court's ruling of 13 June 2000

Paragraph 4 of Article 40 of the Constitution prescribes: "The State shall supervise the activities of establishments of teaching and education."

Paragraph 4 of Article 40 of the Constitution establishes not only the right, but also the duty of the state to supervise the activities of establishments of teaching and education.

The supervision of the activities of establishments of teaching and education includes supervision and control over how the Constitution and laws are observed. In this connection, the state (its institutions) may use various ways and forms of control established under the law.

The supervision over the activities of establishments of teaching and education exercised by the state ensures the equal observance of standards of education and studies, as well as guarantees the compliance of the content and level of education and teaching with qualification recognised by the state.

Under the Constitution, the legislature is entitled to establish which state institution (or institutions) must supervise the implementation of the state education policy and which competent institution of the executive must approve the regulations for such supervision.

Municipal establishments of teaching and education (Paragraph 1 of Article 40, Paragraph 2 of Article 41, and Paragraph 2 of Article 120 of the Constitution)

The Constitutional Court's ruling of 13 June 2000

The phrase "municipal establishments of teaching and education" of Paragraph 1 of Article 40 of the Constitution, and the phrase "municipal schools of general education, vocational schools, and schools of further education" of Paragraph 2 of Article 41 of the Constitution, when account is taken of the norm of Paragraph 2 of Article 120 of the Constitution, mean that there must be establishments of teaching and education that are linked with municipalities by dependence ties. This, among other things, implies the right of municipalities (their institutions) to found, reorganise, or close down establishments of teaching and education, and to have other rights and duties linked with their foundation, reorganisation, or closing down.

However, this right of municipalities is not unlimited. The aforesaid formulations of Paragraph 1 of Article 40 and Paragraph 2 of Article 41 of the Constitution, when account is taken of the norm of Paragraph 2 of Article 120 of the Constitution, implies the right of the legislature to establish the procedure for the foundation, reorganisation, and closing down of the said municipal establishments, as well as to regulate their activities and other relationships in connection with such establishments. It is important that

laws would not deny the right of municipalities to found, reorganise, or close down their establishments of teaching and education, and to have other rights and duties related to their foundation, reorganisation, or closing down.

The duty of the state to supervise the activities of establishments of teaching and education (Paragraph 4 of Article 40 of the Constitution)

The Constitutional Court's ruling of 19 September 2019

... the duty of the state, under Paragraph 4 of Article 40 of the Constitution, to supervise the activities of establishments of teaching and education includes, *inter alia*, the duty of the state to ensure compliance with the uniform education and learning standards in state and municipal establishments of teaching and education, as well as in non-state establishments of teaching and education, and to guarantee the compliance of the content and level of education and teaching with the qualification recognised by the state.

In implementing this duty of the state, under the Constitution, *inter alia*, Paragraph 4 of Article 40 thereof, the legislature has discretion to determine the measures, laid down in the law or in other legal acts, to ensure the education of proper quality and compliance with the uniform education and learning standards established by the state in state and municipal establishments of teaching and education, as well as in non-state establishments of teaching and education.

Non-state establishments of teaching and education (Paragraphs 2 and 4 of Article 40 and Paragraphs 1 and 3 of Article 46 of the Constitution)

The Constitutional Court's ruling of 19 September 2019

... under Paragraph 2 of Article 40 thereof, non-state establishments of teaching and education may be founded according to the procedure established by laws. It should be noted that, when regulating the procedure for the founding of such non-state establishments of teaching and education and/or their activities, the legislature must pay regard to the constitutional imperatives consolidated in Article 46 of the Constitution, *inter alia*, freedom of individual economic activity and economic initiative, consolidated in Paragraph 1 of Article 46 of the Constitution, as well as the duty of the state to regulate economic activity so that it serves the general welfare of the people, established in Paragraph 3 of this article.

[...]

... under Paragraph 2 of Article 40 of the Constitution, the legislature, when regulating the founding and activities of non-state establishments of teaching and education, must coordinate the duty of the state, enshrined in Paragraph 3 of Article 46 of the Constitution, to regulate economic activity so that it serves the general welfare of the people with freedom of individual economic activity and economic initiative, established in Paragraph 1 of Article 46 of the Constitution. In view of this, the Constitution, to a certain extent, allows a differentiated legal regulation governing the activities of non-state establishments of teaching and education and the activities of state and municipal establishments of teaching and education. When establishing such a legal regulation, it is necessary to observe the requirements of the constitutional principle of a state under the rule of law, *inter alia*, the principle of proportionality, which means that the state, in supervising, under Paragraph 4 of Article 40 of the Constitution, *inter alia*, the activities of non-state establishments of teaching and education, must not restrict the right of the owners of these establishments to take autonomous decisions that are necessary for their activities to the extent greater than is needed in order to ensure the proper education quality and compliance with the uniform education and learning standards established by the state.

2.4.3.1.2. The right to seek higher education

The right to seek higher education according to individual abilities (Paragraph 3 of Article 41 of the Constitution)

The Constitutional Court's ruling of 14 January 2002

Paragraph 3 of Article 41 of the Constitution prescribes: “Higher education shall be accessible to everyone according to individual abilities. Citizens who are good at their studies shall be guaranteed education at state schools of higher education free of charge.”

The Constitution is an integral act (Paragraph 1 of Article 6 of the Constitution). The interpretation of certain provisions of the Constitution must not deny its other provisions. The content of the provisions contained in Paragraph 3 of Article 41 of the Constitution ... should be interpreted in a systemic manner in the context of the whole body of constitutional regulation.

Under the Constitution, everyone has the right to higher education accessible according to individual abilities. Citizens who are good at their studies have the right to education at state schools of higher education free of charge. The human right to seek higher education is an important condition for the implementation of different rights and legitimate interests of an individual. The constitutional human right to seek higher education implies the duty of the state to create the preconditions for implementing this right.

Paragraph 3 of Article 41 of the Constitution should be interpreted in the context of the striving for an open, just, and harmonious civil society and a state under the rule of law, as well as public solidarity. The availability of higher education to everyone according to their individual abilities and the guarantee of education free of charge in state establishments of higher education for citizens who are good at their studies are aimed at ensuring not only the interest of these persons, but also the interest of society and the state – a need for specialists with higher education in different areas.

According to Paragraph 3 of Article 41 of the Constitution, everyone has the right to higher education accessible according to individual abilities.

Paragraph 3 of Article 41 of the Constitution refers to state schools of higher education. Under Paragraph 2 of Article 40 thereof, non-state establishments of teaching and education may be founded according to the procedure established by law. These provisions imply that not only state schools of higher education, but also non-state schools of higher education may function in Lithuania. State schools of higher education must be allocated state funds that have to be provided for in the state budget.

The constitutional provision that higher education is accessible to everyone according to individual abilities means that both state schools of higher education and non-state schools of higher education founded according to the procedure established by means of a law, i.e. the entire system of higher education establishments, must be accessible to every individual. This provision also means that those who seek higher education may not be subjected to requirements that are based on criteria other than their abilities. The said provision is inseparable from the principle of the equality of persons, which is enshrined in Article 29 of the Constitution, as well as from the provision of Paragraph 2 thereof, whereby human rights may not be restricted and no one may be granted any privileges on the grounds of gender, race, nationality, language, origin, social status, belief, convictions, or views.

It should be noted that state institutions have the duty not to impose any requirements inconsistent with the constitutional principle of the equality of persons on those who seek higher education, as well as to ensure that schools of higher education themselves do not lay down such requirements. A law must provide for such a legal regulation that would ensure that everyone has the possibility of seeking higher education according to individual abilities.

There must be a balance between the legitimate interests of a person and the needs of society and the state. The financial capacity of the state (including its capacity to fund higher education) is not and cannot be unlimited. The constitutional provision that higher education is accessible to everyone according to individual abilities may not be interpreted as imposing the duty on the state to ensure the funding of any higher education for anyone capable of seeking it without proper consideration of the needs and capacities of society and the state. The constitutional provision that higher education is accessible to everyone according to individual abilities may not be interpreted in a way that would deny the constitutional right of an individual to seek higher education according to his/her abilities even when the state does not finance his/her education because that would exceed the needs and capacities of society and the state. The need of society and the state to have graduate specialists in various areas and the possibility of financing only a certain number of specialists must not be an obstacle for an individual to seeking higher education

according to his/her abilities by other than state funds even when this exceeds the needs and capacities of society and the state.

It follows from Paragraph 3 of Article 41 of the Constitution that, if a state school of higher education is able to provide higher education in accordance with the requirements set by the state not only to persons whose studies are financed by the state, but also to those who seek higher education in a state school of higher education by other than state funds, then it is not allowed to establish such a legal regulation that would obstruct or even prohibit a state school of higher education from admitting such persons to studies at that school of higher education.

The right of citizens who are good at their studies at state schools of higher education to acquire higher education free of charge (Paragraph 3 of Article 41 of the Constitution)

The Constitutional Court's ruling of 14 January 2002

Paragraph 3 of Article 41 of the Constitution consolidates the right of all citizens who are good at their studies at a state school of higher education to acquire higher education free of charge. This right implies that funds must be provided in the state budget to guarantee higher education at state schools of higher education free of charge for citizens who are good at their studies.

According to the Constitution, the state must cover tuition for citizens who are good at their studies at state schools of higher education if there are the following three conditions: (1) the student is a citizen of the Republic of Lithuania; (2) he/she studies at a state school of higher education; (3) he/she is good at his/her studies, i.e. his/her academic results meet the established criteria of good academic results.

Under Paragraph 3 of Article 41 of the Constitution, the higher education tuition of citizens who are students at state schools of higher education and are good at their studies may not be imposed on these persons themselves in whatever form. The higher education of citizens who are students at state schools of higher education and are good at their studies is financed by the state. According to the Constitution, the state has the duty to provide for the principles and procedure of the allocation of state funds necessary to finance the tuition of citizens who are students at state schools of higher education and are good at their studies, as well as to establish control over the lawfulness of the use of such funds.

On the other hand, the Constitution does not contain any prohibition precluding the state from assuming higher financial obligations, in accordance with its capacities, to students of schools of higher education. The assuming of higher financial obligations than implied in the constitutional provision stipulating that citizens who are good at their studies are guaranteed education at state schools of higher education free of charge must not deny the striving for a just and harmonious society enshrined in the Constitution.

The constitutional provision that citizens who are good at their studies are guaranteed education at state schools of higher education free of charge means that a citizen who is good at his/her studies has the right that his/her education at a state school of higher education would be financed by the state. According to the Constitution, it is financed from state budget funds. Therefore, the criteria making it possible to establish which persons are regarded as good at their studies and, accordingly, as prescribed by the Constitution, have the right that their education at state schools of higher education be financed by the state should be established by means of a law.

The autonomy of schools of higher education (Paragraph 3 of Article 40 of the Constitution)

The Constitutional Court's ruling of 14 January 2002

Paragraph 3 of Article 40 of the Constitution prescribes that schools of higher education are granted autonomy. "Traditionally, the autonomy of a school of higher education is conceived as the right to independently determine and establish in its regulations or statute the organisational and governmental structure, relationships with other partners, the order of research and studies, academic syllabus, the procedure of student enrolment, as well as how to resolve other related questions, to use property given over by the state (or newly acquired property), to possess certain territory and buildings, as well as other

property allocated for the needs of research and studies, and to have the guarantee of inviolability. For this purpose, a school of higher education is guaranteed institutional autonomy, i.e. a certain status, which means that there are certain spheres of activities independent of control exercised by executive power” (ruling of 27 June 1994). The Constitution guarantees autonomy for both state and non-state schools of higher education.

State funds must be allocated to state schools of higher education so that they would perform their functions

The Constitutional Court’s ruling of 14 January 2002

The fact that, under the Constitution, the system of establishments of higher education, including state schools of higher education, must be available to everyone according to individual abilities, that citizens who are good at their studies are guaranteed education at state schools of higher education free of charge, and the fact that the Constitution establishes the autonomy of schools of higher education imply that, in order that state schools of higher education would perform their functions, state funds must be allocated to them. Such state funds must be provided for in the state budget. The essential guarantee of the autonomy of state schools of higher education is such a legal regulation where the law on the state budget provides not only for allocations to higher education in general, but also funds to each state school of higher education. When providing for state budget funds to state schools of higher education, consideration should be given to the needs of society and the state ensured by these schools, their existing and future programmes, also their way of ensuring adherence to the set teaching standards, the compliance of the content and level of teaching with qualification recognised by the state, state obligations to these schools, etc.

The autonomy of schools of higher education (Paragraph 3 of Article 40 of the Constitution)

The Constitutional Court’s ruling of 5 February 2002

The system of higher education ensures the development of science and culture, the social sphere and economy. The mission of higher education is to create, accumulate, and disseminate knowledge of science and cultural values, as well as to educate personalities and society. Therefore, society is interested in creating conditions for schools of higher education in order to ensure all-round education of a personality, freedom of teaching, as well as freedom of scientific research and creative activities. Accordingly, schools of higher education have to react to changes in social needs and coordinate their activities with the interests of society. Consequently, the principle of the autonomy of schools of higher education must be balanced with the principle of responsibility and accountability to society, other constitutional values, with the duty of schools of higher education to observe the Constitution and laws, and with the interaction and reconciliation of interests of schools of higher education and society. ... It should be noted that “the right of the state to regulate external affairs of a school of higher education does not contradict its autonomy unless it impairs freedom of research and teaching in the school of higher education” (ruling of 27 June 1994).

Paragraph 3 of Article 40 of the Constitution prescribes that schools of higher education are granted autonomy. The diversity of goals of higher education determines the fact that there may be a variety of types of schools of higher education. In its ruling of 10 July 1996, the Constitutional Court noted that universities differ from other schools of higher education in the nature of offered studies, their goals, the level of the preparation of specialists, etc. Taking into consideration the fact that there may be a variety of types of schools of higher education, laws may provide for the autonomy of different scope for different types of schools of higher education (depending on whether they are universities or colleges, on whether they are founded by the state or by other entities, or on other conditions); laws may regulate the governance and self-governance of schools of higher education in a different manner.

The provision of Paragraph 3 of Article 40 of the Constitution may not be interpreted as prohibiting against establishing, by means of laws, uneven limits of autonomy for different types of schools of higher education. As such, the different establishment, by means of laws, of governance forms of schools of higher

education of various types and of schools of higher education (state and non-state) founded by various founders, as well as the different establishment of the institutions of their governance, the procedure for the formation of such institutions, and the functions and powers of such institutions, does not deny the constitutional principle of the autonomy of schools of higher education.

The discretion of the legislature to establish the manner and means of control over the use of state funds allocated to schools of higher education

The Constitutional Court's ruling of 5 February 2002

... For the purpose of the implementation of their functions, state schools of higher education are allocated state funds provided for in the state budget.

A school of higher education that receives funds from the state budget must account for the proper use of the received funds. It is within the discretion of the legislature to establish, by means of a law, the manner and means of control over the use of such funds.

Paragraph 1 of Article 134 of the Constitution provides that the National Audit Office supervises the lawfulness of the possession and use of state-owned property and the execution of the state budget; however, this does not mean that the legislature does not have the right to establish also other forms of supervision.

The right to seek higher education according to individual abilities (Paragraph 3 of Article 41 of the Constitution)

The Constitutional Court's ruling of 20 February 2008

The constitutional freedom of each individual to choose an occupation or business also implies the right to freely choose and acquire a profession. This right is related to the right to education, which is often a necessary condition for the acquisition of the respective professional qualification. Higher education, which is awarded upon completing studies in higher education, is necessary for certain professions.

According to Paragraph 3 of Article 41 of the Constitution, everyone has the right to higher education accessible according to individual abilities. This constitutional human right is an important condition for implementing various rights and legitimate expectations of an individual and implies the duty of the state to create the preconditions for implementing this right (rulings of 14 January 2002 and 7 June 2007). ... the constitutional human right to seek higher education according to individual abilities and the constitutional human right to have access to profession implies, among other things, the duty of the state to ensure that the documents (diplomas of higher education) confirming acquired higher education (i.e. the completed studies of higher education and an acquired qualification degree) that are issued by schools of higher education on the basis of legal acts (based on the Constitution and laws) passed by state institutions (thus, such schools of higher education operate legally and are recognised by the state), would be recognised as proof that a certain person has acquired higher education (profession) of a certain field and/or level, which is required so that he/she could do a certain job or hold a certain position.

When the constitutional rights of a person to work, education, and profession are interpreted in the context of the constitutional principles of legal certainty, legal security, and transparency, it should be held that the state has the duty to ensure that the requirements defining the education necessary for doing a certain job or holding a certain position would be public and clear; the main requirements must not be changed in an arbitrary and voluntaristic manner; otherwise, people would be unable to properly plan the choice of their profession and education.

The provisions of Paragraph 3 of Article 41 of the Constitution, which consolidate the human right to seek higher education according to individual abilities, should be interpreted by taking account of the provision of Paragraph 3 of Article 40 of the Constitution, whereby schools of higher education are granted autonomy, and of the provision of Paragraph 1 of Article 42 of the Constitution, whereby science and research are free.

University and non-university higher education in law

The Constitutional Court's ruling of 20 February 2008

... not only the abundance of knowledge, but also broadness and fundamentality, are characteristic of university education, since persons who have university education acquire supplementary and universal knowledge that is necessary when adopting crucial decisions in various spheres of life, while other higher educational establishments perform a narrower function – they grant higher education that is the foundation of professional activities in a particular area ... the purpose of university legal education is to prepare specialists with multidisciplinary profiles who are able to assess the entire legal system and decide difficult problems. A much wider and diverged syllabus of university studies, studies that take place a longer time period and are more fundamental, greater attention to general subjects of humanities, private law, etc. help to achieve the said purpose of university legal education. Therefore, the education in law acquired in said other schools of higher education may not be unconditionally regarded as corresponding to university education, even though the former is deemed to be higher education.

Supervision over the activity of schools of higher education (control over the quality of higher education) (Paragraph 4 of Article 40 of the Constitution)

The Constitutional Court's ruling of 20 February 2008

... the autonomy of schools of higher education does not mean that the activity of such schools may not be subject to state control; quite to the contrary, this activity, since it is related, *inter alia*, to the implementation of human rights and freedoms, as well as with the use of state budget funds, must be subject to regulation and supervision; this also stems from the provision of Paragraph 4 of Article 40 of the Constitution, whereby the state supervises the activities of establishments of teaching and education. The Constitutional Court has held that, under the Constitution, the legislature is entitled to establish which state institution (or institutions) must supervise the implementation of the state education policy and which competent institution of the executive must approve the regulations for such supervision (ruling of 13 June 2000); this is *mutatis mutandis* also applicable to supervision over the activities of schools of higher education. However, the right of the state to regulate external relationships of schools of higher education may not limit freedom of scientific and educational activities of schools of higher education (rulings of 27 June 1994 and 5 February 2002).

It also needs to be mentioned that the autonomy of schools of higher education, which is consolidated in the Constitution, does not at all imply that the respective powers may be granted to all schools of higher education; quite to the contrary, the rights enjoyed by schools of higher education may be differentiated (by having regard to the Constitution) according to various important criteria, *inter alia*, according to the status of such schools of higher education (i.e. whether they are universities or not), the level of higher education provided by them to persons that study there, the syllabi they follow, their scientific potential, etc. (decision of 1 February 2008).

The guarantee (which arises from the Constitution) of the recognition of higher education (profession) provided by legally operating schools of higher education implies the powers of the respective state institutions to control the quality of higher education and ensure that the level of provided higher education, which is marked by various qualification degrees, would meet certain uniform standards of the quality of higher education – both general standards and those concretising them, i.e. those defining the requirements for certain fields of studies. The said standards must be established by the state institutions that, within their competence, form the policy of higher education, as well as organise and carry out supervision over the activities of schools of higher education. The standards of the quality of higher education that must be met by a person aspiring to hold a certain position or to be engaged in a certain professional activity must be established by means of a law; ensuring such standards and control over compliance with them may also be established by means of substatutory legal acts, as well as by means of legal acts of schools of higher education; requirements for certain fields of studies may also be established by means of substatutory acts the legal regulation established wherein must not compete with that established in laws. The importance of such standards is especially evident in certain professions, *inter alia*, the professions controlled by the state, where especially complex and responsible work is linked with the acquisition of such professions; the

importance of such standards is also especially evident in such positions in institutions of public power where certain functions related to the implementation of public power (first of all, state power) are entrusted only to such representatives of a certain profession who have especially high qualification; in the context of the constitutional justice case at issue, it needs to be noted that it is especially evident that the said standards are necessary for the legal profession (and not only for it).

Requirements for higher legal studies; the duty of the state to ensure that the level of higher education in law would comply with the quality standards set for such education (on the requirements for the professional qualification of lawyers, also see 2.4.1. Economic rights, 2.4.1.2. The right to work, 2.4.1.2.2. Professional competence requirements; on the requirements for the professional qualification of judges, see 9.1. Courts, 9.1.4. The constitutional status of judges. The appointment of judges, their professional career, and their release from duties. The judicial self-governance institutions)

The Constitutional Court's ruling of 20 February 2008

... taking account of the role of the legal profession in the state and its legal system, it should be held that, although schools of higher education establish their study programmes by themselves and, due to this, these programmes can be rather varied ones (since there is a great variety of jobs for the occupation of a lawyer, and this occupation is characterised by the fact that different jobs need higher education in law that is of a different level), the state has the duty to ensure that the level of higher education in law (which is marked by qualification degrees) provided in different schools of higher education according to various programmes of studies of law would comply with certain uniform standards of the quality of higher education in law. Of course, if there is a need (taking account of various important factors, *inter alia*, changes in the legal system and in the European legal area, as well as in international practice), these standards may be modified.

Taking account of the principles of legal certainty and legal security, which are consolidated in the Constitution, the fact that a person has completed university studies in the field of law leads to the presumption that such a person is eligible for a job for which university higher education in law is necessary (of course, if he/she meets all the conditions that need not be limited only to the requirement of university higher education in law, but may also include the requirements for a certain work period as a lawyer, the practice performed, etc.). The same can be said as regards, *inter alia*, citizens who wish to apply for the position of a judge. Thus, the programmes of university studies in the field of law of schools of higher education must be such that the theoretical preparedness and practical abilities (acquired during the time of the studies) of persons who have completed these studies would raise no doubts, while the professional qualification acquired by them would allow them to be eligible for holding positions (professions) in order to hold which (in order to engage in which) university higher education in law is required.

Therefore, whatever forms of studies, the scope of a study programme designed for the acquisition of the same qualification degree (professional qualification) must be not lower than the established standard; while this standard, in its turn, must be oriented to such core of university higher studies in law that is universally recognised in the countries of the western legal tradition (especially, in the continental legal tradition), as the said core is ... universal and more or less stable; the said standard must include all areas of law that are traditionally and universally recognised as the most important ones – the so-called main subjects of studies ... which are in line with the concept of fully fledged university higher education in law, and the said standard may not be limited only to one area of law. Only in such a case will the qualification of a lawyer be reasonably recognised for persons who completed higher studies in law.

... in this ruling of the Constitutional Court, it was held that ... [the] main subjects of [university legal] studies are the legal theory, the history of law, constitutional law, administrative law and administrative procedure law, finance law, criminal law and criminal procedure law, civil law and civil procedure law, labour law, international public law, and European Union law; also, as a rule, students are required to study even more legal disciplines, as well as certain non-legal (social, humanities) subjects.

It has also been held that the transformation of the model of the preparation of lawyers – that of the system of higher education in law – is hardly the grounds or a stimulus for abandoning the core of university higher studies in law that is universally recognised in the countries of the western legal tradition (especially, in the continental legal tradition), where such studies comply with the concept of fully fledged university higher education in law: and, if the model of two-cycle university studies in the field of law is chosen, it is necessary to ensure that the above-discussed main study subjects in the field of law, as well as other legal subjects and certain subjects in non-legal fields, would be studied.

Thus, the same professional standards (the same standards as for fully fledged single-cycle studies in the field of law) are also applicable to university higher education in law when the studies are conducted under the programmes assigned to other models of higher studies in law; the occurred diversification of the preparation of lawyers and the emergence of new models of higher (first of all, university) studies in law may not serve as grounds for diminishing these standards or negating them at all. Quite to the contrary, no matter what new models of studies, which have not existed in Lithuania before, came into being, the diversification of the preparation of lawyers must be oriented to the standards (of qualification, professional knowledge, abilities) of the legal profession that come from the western legal tradition.

[...]

It needs to be noted that the mere fact that studying the study subjects that include the legal areas traditionally and universally recognised as the most important ones is joined with studying some other subjects (which, as a rule, are tightly related to law) composing a comparatively significant part (module) of the study programme, also the fact that certain study programmes are named as programmes of non-legal studies, but their names reflect an additional field (module) of these studies, in themselves do not mean and may not be regarded as grounds for asserting that persons who complete such studies are groundlessly awarded the qualification degree of bachelor of law or master of law (thus, also the qualification of a lawyer). The important thing is that these studies encompass the study subjects (disciplines) that compose such core of university higher studies in law that is generally recognised in the countries of the western legal tradition (especially, in the continental legal tradition).

[...]

... when persons who have the degree of bachelor that was acquired upon finishing studies under a non-university bachelor study programme in the field of law are admitted to university master studies in the field of law, additional studies must be organised for such persons.

It needs to be noted that the discussed requirement of “levelling” studies is not applicable to situations where a person who has the qualification degree of bachelor in any field of studies that was acquired at a university is admitted to studies under a university integrated studies programme in the field of law, *inter alia*, such a study programme upon completing which the qualification degree of master of law is granted.

In addition, higher studies in law (as any other studies) must be organised and continue inasmuch as there is enough time realistically to study the theoretical subjects provided for in the study programme and to acquire practical abilities; no matter what form of studies (full-time studies, part-time studies, studies by correspondence, or another form of studies) there is, the time (expressed in study credits) assigned to the studies, including professional practice, must be the same.

Regard must also be paid to the requirement arising from the Constitution to ensure that the requirements defining the legal education necessary in order to work in a certain job or to hold a certain position would be public and clear and that they would not be changed in an arbitrary and voluntaristic manner.

State institutions and schools of higher education within their competence must ensure that the established standards of university higher education in law would be followed.

The state higher education policy

The Constitutional Court's ruling of 20 March 2008

Paragraph 1 of Article 40 of the Constitution *expressis verbis* mentions state schools of higher education; Paragraph 2 of Article 40 of the Constitution provides that “non-state establishments of teaching ... may be founded according to the procedure established by law”; Paragraph 4 of Article 40 of the Constitution provides that “The State shall supervise the activities of establishments of teaching”; Paragraph 3 of Article 41 of the Constitution provides that “Higher education shall be accessible to everyone according to individual abilities. Citizens who are good at their studies shall be guaranteed education at state schools of higher education free of charge”; Paragraph 2 of Article 42 of the Constitution provides that “The State shall support ... science”. These provisions of the Constitution imply the duty of the state to establish a system of state schools of higher education and to support state schools of higher education. Under the Constitution, the state also has the duty to define, by means of a law, the procedure of founding non-state schools of higher education.

The state forms and executes the higher education policy, which should conform to the public interest and needs of society. This policy includes, *inter alia*, the establishment of strategic areas (fields) of the development of higher education, the choosing of a model of financing higher education that corresponds to state needs and capacities, the determination of the demand for specialists of various areas (fields), and the establishment of measures allowing the ensuring of the quality of studies. Under the Constitution, *inter alia*, Paragraph 3 of Article 41 thereof, the state must undertake the obligations to finance the preparation of a certain number of specialists. Such obligations – which must be announced in advance – are in conformity with the need of society and the state to have a certain number of specialists of certain areas (fields) with higher education, as well as the capacities of society and the state to finance their preparation.

When forming and executing the higher education policy, the state must pay regard to the interests of schools of higher education, i.e. the interests of both state schools of higher education and non-state schools of higher education, since higher education and science in general can be fostered and developed only without overly detailed state administration of scientific activity and teaching. In this context, it needs to be noted that, under Paragraph 1 of Article 42 of the Constitution, culture, science and research, and teaching are free. However, it needs to be emphasised that funds allocated by the state to schools of higher education must be used efficiently and in compliance with requirements of legal acts.

The right to seek higher education according to individual abilities; the duty of the state to create an effective system of loans and support for persons studying at schools of higher education (Paragraph 3 of Article 41 of the Constitution)

The Constitutional Court's ruling of 20 March 2008

According to Paragraph 3 of Article 41 of the Constitution, everyone has the right to higher education accessible according to individual abilities. ...

However, it needs to be emphasised that the accessibility of higher education to everyone according to individual abilities does not at all mean that higher education is universally compulsory, nor does it mean that it is required to establish such standards of higher education that would worsen the quality of higher education.

State budget funds must be allocated to state schools of higher education. Upon assignment by the state, specialists of certain areas (fields) may also be prepared at non-state schools of higher education from state budget funds. In addition, it is permitted to support citizens who study in schools of higher education of other states from state budget funds.

In this context, it needs to be mentioned that, as it was held by the Constitutional Court, under the Constitution, the state must create such a system of support for persons who seek to acquire higher education where every person who learns at a school of higher education and requires support would have the possibility of getting a state loan necessary for his/her studies (ruling of 7 June 2007). Such a system of supporting persons who seek to acquire higher education must also ensure the possibilities for persons who study at schools of higher education, who meet constitutionally reasonable criteria, and who need support to receive support of a different nature (grants, allowances, etc.). The state may establish various

forms of granting state loans to persons studying at state schools of higher education, as well as those of supporting these persons, and it has wide discretion in this area. However, it needs to be emphasised that the system of granted loans and support must ensure the accessibility to higher education according to individual abilities; the constitutional principles of non-discrimination, clarity, and transparency must be respected. The system of loans to those studying at state schools of higher education and support of those studying at schools of higher education must be effective and reliable.

The Constitutional requirement to ensure accessibility to higher education according to individual abilities does not mean that this must be done only by state funds. In the Constitutional Court's ruling of 14 January 2002 ... it was held that, if a state higher school is able to provide higher education in accordance with requirements set by the state not only to persons whose studies are financed by the state, but also to those who seek higher education in a state higher school by other than state funds, it is not allowed to establish such a legal regulation that would obstruct or even prohibit a state school of higher education from admitting such persons to studies at that school of higher education. However (especially due to the fact that ... in Lithuania, state schools of higher education are dominant), it needs to be emphasised that the right of state schools of higher education, which stems from the Constitution, also to provide higher education to persons who seek education at their own expense (providing the respective school of higher education has the possibilities of providing higher education that complies with the quality standards established by the state) must not create in any cases the preconditions for worsening the quality of studies at state schools of higher education, *inter alia*, for deteriorating the conditions of studies for persons who seek to acquire higher education by state funds.

The right of citizens who are good at their studies at state schools of higher education to acquire higher education free of charge (Paragraph 3 of Article 41 of the Constitution)

The Constitutional Court's ruling of 20 March 2008

... under Paragraph 3 of Article 41 of the Constitution, the state has the duty to guarantee citizens who are good at their studies education at state schools of higher education free of charge.

The Constitution does not *expressis verbis* define which citizens should be regarded as those who are good at their studies. The content of the expression "a citizen who is good at his/her studies" is revealed in the official constitutional doctrine: a citizen who is good at his/her studies should be regarded as the one who "is good at his/her studies, i.e. his/her study results meet the established criteria of good learning" (ruling of 14 January 2002); the criteria making it possible to establish which persons are regarded as good at their studies and, consequently, as prescribed by the Constitution, have the right that their education at state schools of higher education be financed by the state should be established by means of a law (ruling of 7 June 2007). These criteria must be known in advance, they must be clear and transparent, they must not deviate not only from the constitutional concept of good learning, but also from such a concept of good learning that arises from the social experience of society and does not deny the meaning of the word "good" as understood by everyone and generally recognised. In the context of the constitutional justice case at issue, it needs to be emphasised that such law-established criteria according to which persons whose studies are funded by the state are regarded as those who are good at their studies must not be formalistic; moreover, it is not permitted to establish in advance a number (either absolute or relative) of citizens who are allegedly "good at their studies", i.e. it is not permitted to establish any quota regarding this matter, since it is impossible to predict in advance precisely how many students will actually be good in their studies and how many of them will not. The establishment of such quotas would completely distort the constitutional concept of good learning. On the one hand, there can actually be more citizens who are good at their studies than it is provided for by establishing a quota *a priori*; therefore, some citizens who, according to the generally recognised criteria, are doubtlessly regarded as good in their studies would remain outside of the quota; in such cases, the state would not fulfil its constitutional duty to finance the studies of all students who are good in their studies at state schools of higher education. On the other hand, there can actually be fewer citizens who are good at their studies than it is provided for by establishing a quota *a priori*; still, it would be necessary to fund the studies of such citizens studying at state schools of higher education who

were covered by the said quota accidentally and whose study results, according to the generally recognised criteria, are doubtlessly not regarded as good; in such cases, state funds would be used in a manner that is constitutionally unreasonable and unfair from the social standpoint.

It needs to be specially emphasised that it is impossible to interpret the constitutional provision whereby citizens who are good at their studies are guaranteed education at state schools of higher education free of charge as meaning that the Constitution guarantees higher education covered from state budget funds for all citizens who are good at their studies at state schools of higher education no matter under what conditions they were admitted to such schools, i.e. also for those citizens who are good at their studies who, however, in the course of admittance to a state school of higher education, were not admitted to the places whose number announced in advance conforms to the obligation of the state to fund the preparation of a certain number of specialists, but were admitted to study at a state school of higher education at their own expense. The said provision of the Constitution should be interpreted as consolidating the duty of the state to guarantee higher education funded from the state budget only for those citizens who are good at their studies at state schools of higher education who are trained in order to satisfy the state-determined need for specialists of the respective areas (fields). ... support of higher education must be regulated by means of legal acts in such a manner that the expenses of studies of citizens who are good at their studies at state schools of higher education and are trained in order to satisfy the established need for specialists of the respective areas (fields) would by no means fall upon those persons.

Supervision over the activity of schools of higher education (Paragraph 4 of Article 40 of the Constitution)

The Constitutional Court's ruling of 20 March 2008

... the constitutional provision that the state shall supervise the activities of establishments of teaching, the constitutional imperative of balancing the interests of schools of higher education and those of society, the constitutional obligation of the state to ensure the effectiveness of the system of higher education also imply the duty of the state to adopt the respective decisions linked with financing higher education in state schools of higher education by assessing whether higher education is provided in these schools of higher education according to confirmed programmes of studies, also, by assessing the quality of these programmes and that of their execution, and by assessing the capabilities of schools of higher education regarding the preparation of a certain number of good quality specialists of the respective areas (fields); it is also necessary to assess whether there are necessary conditions in state schools of higher education to provide higher education that meets the standards established by the state to persons whose studies are financed from state budget funds, as well as to persons who study at their own expense.

[...]

... under the Constitution, the state, while having the duty to supervise the activity of establishments of teaching, must also supervise whether state-owned property transferred to state schools of higher education is possessed, used, and disposed of in compliance with the public interest and needs of society.

[...]

... state schools of higher education may also provide higher education that conforms to the standards established by the state to persons who study at their own expense provided that the respective state school of higher education has such possibilities. Thus, persons studying in schools of higher education should also be treated as consumers of higher education services. While providing higher education to persons studying at their own expense, state schools of higher education compete with one another and with non-state schools of higher education.

The provision “The State shall supervise the activities of establishments of teaching and education” of Paragraph 4 of Article 40 of the Constitution, the provision “The law ... shall protect freedom of fair competition” of Paragraph 4 of Article 46 thereof, and the provision “The State shall defend the interests of the consumer” of Paragraph 5 of the same article, give rise to the duty of the state to establish, when regulating the relationships connected with a school of higher education, such a legal regulation that would not distort fair competition and to consolidate various measures of the protection of consumers of higher

education services. When the respective relationships are regulated by legal acts, it is necessary to pay regard to the fact that ... state budget funds are allocated to state schools of higher education and certain property belonging to the state by right of ownership is transferred to them.

The specific nature of the work of teachers of schools of higher education

The Constitutional Court's ruling of 20 March 2008

In order that schools of higher education would be able to perform their constitutional obligation – to provide higher education that meets the standards established by the state – it is especially important that highly-qualified teachers work in them. This condition of good-quality higher education is inseparable not only from freedom of science, research, and teaching, which is consolidated in the Constitution, but also from the existing infrastructure of higher education and state investment into this infrastructure, from the structure of schools of higher education (which should not be regulated by state legal acts in a manner that would stop the dynamism of scientific and pedagogical activity and the mobility of teachers and scientists), as well as from the respective social guarantees established for teachers, *inter alia*, from the establishment of remuneration that corresponds to the social function (protected by the Constitution) of this profession, secures dignified life, that would make it possible to devote all working time to pedagogical and scientific activity, as well as to increasing qualification. Teaching and scientific activity are a special activity that requires creativity; such activity is not similar to other types of professional activities and it is impossible to identify it with those other types of activities. Studies do not mean working solely in lecture rooms; therefore, the work of teachers in preparing qualified specialists is by no means linked exclusively with the time spent with individuals studying in lecture rooms etc.; a very important part of the quality, thus, creative, work time of a teacher of a school of higher education is given for preparation for classes with the students, for guiding students in their independent studies, for heading scientific activities, for professional communication with other scientists and researchers, etc., i.e. for activities that are often conducted outside the premises of a school of higher education, and, sometimes, such activities cannot be conducted on these premises (all the more so because, as it is generally known, in Lithuania, teachers in schools of higher education do not have individual premises for work). This specificity of teachers of schools of higher education determines that the account of their workload may not be based upon the mere formal criterion – the time spent in a lecture room or on the premises of a school of higher education in general. The account of the workload of teachers of schools of higher education must be regulated by legal acts in a manner that the said specificity of their work would be taken into consideration; the constitutional guarantee of the autonomy of schools of higher education implies that, in this connection, the legislature must provide for a special legal regulation, while the greater part of the legal regulation of the said relationships should be composed by a local legal regulation established by schools of higher education, which must be based on the legal regulation established by the legislature. Schools of higher education must be guaranteed the possibilities of preparing qualified specialists; otherwise, the value of higher education acquired in schools of higher education of Lithuania would be diminished.

Financing higher education; establishing the cost of studies

The Constitutional Court's ruling of 20 March 2008

The Constitutional Court has held that: while preparing a draft state budget, the Government must take account of the existing economic and social situation, the needs and capacities of society and the state, the available and potential financial resources and state liabilities, as well as other important factors; the state capacity to finance higher education is limited; the state capacity to finance higher education is and must be related to the interest of society and the state – the need to have specialists of various areas with higher education (rulings of 14 January 2002 and 11 July 2002). Thus, the state is under the duty to determine the need for specialists of various areas (fields) by taking account of not only the existing demand for such specialists, but also of the demand for such specialists in the future, and to allocate the necessary funds in order to prepare such specialists. It has been held in this ruling of the Constitutional Court that the state obligations, which are announced in advance, to finance the preparation of a certain number of specialists

are in conformity with the need of society and the state to have a certain number of specialists of certain areas (fields) with higher education, as well as the capacities of society and the state to finance their preparation.

The state budget funds allocated to schools of higher education also include funds for financing the studies of citizens who are good at their studies at state schools of higher education. However, it needs to be noted that, as it has been held in this ruling of the Constitutional Court, the Constitution guarantees higher education covered by state funds not to all citizens who are good at their studies at state schools of higher education, no matter under what conditions they were admitted to such schools (i.e. not to all those citizens who are good at their studies and who, however, in the course of admission to a particular state school of higher education, are not admitted to the places whose number, announced in advance, conforms to the obligation of the state to fund the preparation of a certain number of specialists, but who are admitted to study at a state school of higher education at their own expense), but only to those citizens who are good at their studies at state schools of higher education and who are prepared in order to meet the state-determined need for specialists of the respective areas (fields). It is for financing their studies that it is necessary to provide the required funds in the state budget. If the study results of these citizens do not correspond to the criteria of good learning established under the law, the state is not obliged to finance their studies.

The state, which, under the Constitution, has the duty to support science, ensure accessibility to higher education, and guarantee free-of-charge higher education in state schools of higher education to those citizens who are good at their studies and who are prepared by meeting the established need for specialists of the respective areas (fields), may choose and establish in laws various models of financing higher education. In doing so, the legislature is bound by the constitutional obligations of the state, as well as the financial capacities of the state, which, as mentioned before, are limited. A law may not establish any such model of financing higher education where it would not be based on a balanced assessment of the needs of both society and the state and the financial capacities of the state and where the implementation of such a model by the state would clearly and obviously be impossible; the establishment of such a model would be in conflict, *inter alia*, with the constitutional imperative of social harmony and would not allow the state to perform its various other obligations.

Therefore, when establishing a model of financing higher education and regulating, by means of legal acts, the relationships linked thereto, account must be taken of the fact that higher education that would meet the quality standards established by the state can be provided by such schools of higher education that have highly qualified teachers, the indispensable training facilities, the necessary infrastructure, etc. ... under the Constitution, the rights enjoyed by schools of higher education may be differentiated (by having regard to the Constitution), *inter alia*, according to the status of these schools of higher education (i.e. whether they are universities or not), the level of higher education provided by them to persons that study there, the syllabi they follow, their scientific potential, etc. Thus, when account is taken of all this, the funding of state schools of higher education from the state budget may also be different and, in certain respects, it must be different. There is not any provision of the Constitution that could be interpreted as implying egalitarianism in this area.

The planning of funds for state schools of higher education in the budget is inseparable from the reasonable and fair computation of expenses of studies, i.e. how much funds are necessary for the arrangement of good quality studies in those schools of higher education and the maintenance of the proper level of scientific activity. The expenses of studies (also those in state schools of higher education) are determined by various factors; in different schools of higher education the expenses of studies even of the same area (fields) and of the same quality can be different. The state, while taking account of the position of schools of higher education, has the powers to establish the composition of the expenses of studies in state schools of higher education; by means of state legal acts, the rational, clear, transparent, and reasonable criteria may and must be established where such criteria would enable state schools of higher education to compute realistic expenses of studies conducted in them according to areas (fields), cycles, and forms of studies so that the financing of these studies from the state budget would correspond to its

purpose, i.e. so that this would allow the ensuring of good quality preparation of specialists of various areas (fields). Therefore, the computation of the expenses of studies must not be pressed on schools of higher education. Such a legal regulation that creates the preconditions for ignoring the position of schools of higher education based on rational arguments regarding the realistic expenses of studies conducted in them would doubtlessly violate the autonomy of schools of higher education, which is guaranteed by the Constitution; the said legal regulation would also violate other values consolidated, defended, and protected by the Constitution, *inter alia*, the right of an individual to seek good-quality higher education. When assigning a school of higher education to admit a certain number of students, the state must guarantee that the state budget will provide for the respective funds and that these state funds will cover their expenses of studies, of course, providing the study results of such students will correspond to the criteria of good learning established under the law.

... the computed realistic expenses of studies are an important guideline in establishing the cost of studies that must be paid for studies at state schools of higher education by persons who are prepared by satisfying the need (established by the state) for the specialists of various areas (fields) if their study results do not correspond to the criteria of good learning established under the law (since, as mentioned before, although the funds necessary for their studies must be provided for in the state budget, if the study results of these citizens do not correspond to the criteria of good learning established under the law, the state will not be obliged to finance their studies).

The said expenses of studies are also an important guideline in establishing the cost of studies that must be paid by persons who are not admitted to the places whose number, announced in advance, corresponds to the established obligation of the state to finance the preparation of a certain number of specialists, but who are admitted to studies in a state school of higher education at their own expense. There are no legal arguments that would allow maintaining that the cost that must be paid by such students for their studies must in all cases be the same as the cost that must be paid by persons who are prepared by satisfying the need (established by the state) for the specialists of various areas (fields) if their study results do not correspond to the criteria of good learning established under the law. As mentioned before, the teaching of such students depends on the capacities of a school of higher education to provide good-quality higher education without creating any preconditions for the deterioration of the quality of studies in state schools of higher education, *inter alia*, by giving less attention to the persons who seek to acquire higher education by state funds; thus, due to the creation of particular possibilities, additional expenses may also arise and, if the state assigns the admission of fewer students than schools of higher education are capable of preparing, the expenses for studies may decrease. Consequently, the discussed cost of studies could not necessarily be the same.

It needs to be emphasised that state schools of higher education have the powers to establish the cost of studies. In addition, it needs to be emphasised that this cost must be rationally reasoned, it must not create any preconditions for violating the constitutional principle of accessibility to higher education according to individual abilities, the imperatives (consolidated in the Constitution) of social harmony and justice, and it may not increase social exclusion. From the viewpoint of the Constitution, it would be unjustifiable to establish such cost for studies that would also create the preconditions for covering such expenses by means of studying persons that are not necessary so that particular persons who pay for their studies would acquire good-quality higher education, i.e. that are not necessary for the arrangement of good-quality studies in those schools of higher education and the maintenance of the proper level of scientific activity.

The organisational and governance structure of a school of higher education; the financial independence of schools of higher education

The Constitutional Court's decision of 28 October 2009

The organisational structure of a school of higher education comprises the units of the school of higher education in which studies are organised and scientific research is performed (e.g. faculties, their affiliates, institutes, departments, laboratories, etc.).

The governance structure of a school of higher education in the broad sense is understood to be a system of certain single-person and/or collegial institutions that adopt decisions on issues of the governance of school of higher education, that perform the functions of administration and control (e.g. the rector, vice-rectors, the senate, the council, the administration, etc.). According to their purpose, these institutions perform different functions.

The Constitutional Court has held that laws may regulate the governance and self-governance of schools of higher education in a different manner; as such, the different establishment, by means of laws, of governance forms of schools of higher education of various types and of schools of higher education (state and non-state) founded by various founders, as well as the different establishment of the institutions of their governance, the procedure for the formation of such institutions, and the functions and powers of such institutions, does not deny the constitutional principle of the autonomy of schools of higher education (ruling of 5 February 2002).

The Constitutional Court has also held that the constitutional guarantee of the autonomy of schools of higher education implies that, in this connection, the legislature must provide for a special legal regulation, while the greater part of the legal regulation of the said relationships should be composed by a local legal regulation established by schools of higher education, which must be based on the legal regulation established by the legislature (ruling of 20 March 2008).

It should be held that, under the Constitution, the legislature, while not denying the principle of the autonomy of schools of higher education, may establish, by means of laws, the grounds for the organisational and governance structure of schools of higher education.

[...]

... in order to ensure the constitutional implementation of the principle of academic freedom and the public interests so that the conditions would be created in schools of higher education to ensure all-round education of a personality and that schools of higher education would have freedom of teaching, scientific research, and creative activities, the institutions of governance that fulfil the self-governance functions of schools of higher education must be consolidated in the governance structure of schools of higher education. The imperative of the autonomy of schools of higher education, which stems from the Constitution, could be guaranteed only in this way.

At the same time, it should be noted that the Constitutional Court has held that the fact that the Constitution establishes the autonomy of higher schools allows making the presumption that, in order to perform their functions, state higher schools need to be allotted state funds. Such state funds must be provided for in the state budget. The essential guarantee of the autonomy of state higher schools is such a legal regulation where the law on the state budget provides not only for allocations to higher education in general, but also funds for each state school of higher education (ruling of 14 January 2002).

It should be held that it would be impossible to ensure the autonomy of schools of higher education, *inter alia*, the constitutional principle of academic freedom, if schools of higher education did not have financial independence, i.e. if their governance institutions that implement the functions of self-governance of the school of higher education had no possibility of adopting (on the basis of laws) decisions on the use of financial funds and other property for performing their mission. Consequently, the function of adopting decisions, based on laws, concerning the use of funds and other property, which is necessary for carrying out the mission of the school of higher education, must be assigned, *inter alia*, to the functions of the governance institutions of schools of higher education that implement the function of self-governance of the school of higher education.

In view of the fact that ... the constitutional notion of freedom of science, research, and teaching implies the professional independence of scientific community, which is inseparable from the self-governance of schools of higher education and which constitutes one of the fundamental conditions of the implementation of the autonomy of a school of higher education, it should be noted that self-governance must be implemented through the institutions of schools of higher education, the procedure of forming which should not be such that would not enable the academic community of a school of higher education to influence the adoption of decisions on managing the affairs of the school of higher education. For this

reason, the governance institutions of schools of higher education that fulfil the self-governance functions of schools of higher education must be formed by schools of higher education themselves after they establish in their by-laws or statutes, on the basis of laws, the ways and procedure of forming such institutions. Only in this way the constitutional implementation of the principle of academic freedom would be guaranteed. At the same time, the imperative of the autonomy of schools of higher education that stems from the Constitution would be guaranteed.

It should be noted that, as a rule, these institutions of schools of higher education are formed from members of their academic community. The autonomy of schools of higher education implies the right of schools of higher education to provide that not exclusively members of the academic community of the respective school of higher education could become members of the said institutions.

[...]

... in order to enable the state to implement its obligation to supervise the activity of educational establishments, as well as to ensure the reconciliation of the principle of autonomy of schools of higher education with the principle of responsibility and accountability to society, to guarantee the quality of studies and development of scientific research, in the administrative structure of the school of higher education, as a rule, it is necessary to provide for an institution that would perform the functions of control and supervision; the purpose of such an institution would be to ensure the responsibility and accountability of a school of higher education to society; however, the said institution would not be directly related to the implementation of the principle of academic freedom. In this context, it should be noted that such an institution that performs the functions of control and supervision and the purpose of which is to ensure the responsibility and accountability of the school of higher education to society may be formed not exclusively from members of the academic community of the respective school of higher education – *inter alia*, representatives of institutions of the executive power of the state may also be appointed to it.

It should be held that, while not denying the principle of the autonomy of schools of higher education, the legislature may, by means of a law, establish the ways and procedure of forming such institutions within the governance structure of schools of higher education, which would perform the functions of control and supervision; the purpose of the said institutions would be to ensure the responsibility and accountability of schools of higher education to society.

In this context, it should be noted that it is not allowed to establish any such a legal regulation whereby an institution that performs the functions of control and supervision where the purpose of such an institution is to ensure the responsibility and accountability of a school of higher education to society would, in addition to the functions of control and supervision, also perform the governance functions of the school of higher education, which are, as mentioned before, assigned to the governance institutions of schools of higher education, where the latter institutions fulfil the self-governance functions of the school of higher education and are usually formed from members of the academic community of the respective schools of higher education.

The assignment by the state of a non-state school of higher education to prepare specialists of individual areas (fields) from state budget funds (Paragraph 3 of Article 41 of the Constitution)

The Constitutional Court's decision of 18 December 2009

... it is impossible to interpret the Constitution, *inter alia*, Paragraph 3 of Article 41 thereof, as meaning that, upon assignment by the state, specialists of certain areas (fields) may not be prepared at non-state schools of higher education from state budget funds. Also, such situations are possible where specialists of certain areas (fields) cannot be prepared at state schools of higher education due to objective circumstances (for instance, situations are possible where state schools of higher education do not possess special training facilities, etc. in order to prepare the specialists of certain areas (fields) that are necessary for the state). At the same time, it needs to be noted that, in such cases, the assignment given by the state to a non-state school of higher education to prepare the specialists of certain areas (fields) from state budget funds must be based on a balanced assessment of the needs of both society and the state and that of the financial capacities of the state and it may not be in conflict with, *inter alia*, the constitutional imperative

of social harmony. In such cases, the state, when assigning non-state schools of higher education, must guarantee that the expenses of learning (studies) of such specialists will be covered from state funds in cases where their study results will meet the criteria of good learning established by means of a law.

The assessment of the knowledge of individuals who study at state schools of higher education (Paragraph 3 of Article 40 of the Constitution)

The Constitutional Court's decision of 18 December 2009

... as it has been held in the rulings of the Constitutional Court on more than one occasion, under Paragraph 3 of Article 40 of the Constitution, schools of higher education are granted autonomy; such autonomy includes, *inter alia*, the right to independently establish the procedure of science and studies, as well as syllabi, and to decide other related issues.

In the course of establishing the procedure of science and studies, the procedure for assessing the knowledge acquired in a state school of higher education must also be established. Such a procedure must be known in advance; it must be clear and objective.

It needs to be noted that the knowledge of the individuals who study at state schools of higher education must be assessed on a regular basis within the respective periods of studying at these schools. Legal acts may name these periods in a varied manner. As a rule, the basic assessment of the knowledge of individuals who study at Lithuanian state schools of higher education as regards the studied subjects is regularly conducted after each period of academic studies – a semester.

It needs to be mentioned that the procedure (established in a state school of higher education) of assessing the knowledge acquired in a state school of higher education must, *inter alia*, be such that would allow assessing whether the study results of citizens studying at state schools of higher education upon assignment by the state (i.e. those who are prepared in order to meet the state-determined need for the specialists of the respective areas (fields)) correspond to the criteria of good learning established under the law.

It should be noted that citizens who are good at their studies at state schools of higher education and who study at state schools of higher education upon assignment by the state (i.e. in order to meet the state-determined need for the specialists of the respective areas (fields)) must be guaranteed education free of charge as long as their study results correspond to the criteria of good learning established under the law.

In addition, it needs to be noted that citizens who were admitted to state schools of higher education to study upon assignment by the state (i.e. in order to meet the state-determined need for the specialists of the respective areas (fields)) must be guaranteed education free of charge until the first main assessment of the knowledge of the subjects studied by them.

[...]

... the assessment of the results of studying (according to the criteria of good learning established by means of a law) of citizens who study at state schools of higher education upon assignment by the state (i.e. in order to meet the state-determined need for the specialists of the respective areas (fields)) must be conducted on a regular basis after assessing the knowledge of studied subjects after each period of academic studies.

The duty of schools of higher education and scientific research institutes to account for the use of state budget funds

The Constitutional Court's ruling of 22 December 2011

A school of higher education, which receives funds from the state budget, must account for the proper use of the received funds; it is within the discretion of the legislature to establish, by means of a law, the manner and means of control over the use of such funds (ruling of 5 February 2002 and the decision of 28 October 2009). These provisions of the constitutional doctrine are also applicable to the legal regulation related to the allocation of state budget funds to scientific research institutes.

In this context, it should be noted that, when combining the autonomy of schools of higher education with their responsibility and accountability to society, the legislature has the duty to establish such a legal

regulation by which all (state and non-state) schools of higher education and all state and non-state scientific research institutes should inform society of the use of state budget funds allocated to them.

[...]

The Constitution, *inter alia*, Paragraph 2 of Article 128 thereof, gives rise to the requirement that state-owned property must be used sparingly, not wasted, and managed rationally (rulings of 30 September 2003, 5 July 2007, and 20 March 2008). It needs to be noted that Paragraph 2 of Article 128 of the Constitution implies, *inter alia*, the requirement to establish such a legal regulation that would ensure the proper use of state budget funds allocated to institutions of science and studies. Thus, the legislature, when regulating the allocation and use of state budget funds to institutions of science and studies, must establish the duty of all institutions of science and studies to account for the use of state budget funds allocated to them.

The autonomy of schools of higher education and the self-governance of the academic community; the powers of the legislature to regulate the activity of schools of higher education, *inter alia*, their organisational and governance structure (Paragraph 3 of Article 40 of the Constitution)

The Constitutional Court's ruling of 22 December 2011

... the academic autonomy and institutional autonomy of schools of higher education are inseparably interrelated, i.e. without academic autonomy it is impossible to guarantee institutional autonomy – the self-governance of a school of higher education, while without institutional autonomy it is impossible to ensure academic autonomy, which stems, *inter alia*, from constitutional freedom of science and research. In its decision of 28 October 2009, the Constitutional Court held that the constitutional concept of freedom of science, research, and teaching implies the professional independence of scientific community, which is inseparable from the self-governance of schools of higher education, which constitutes one of the fundamental conditions of implementation of autonomy of a school of higher education; in order to ensure the constitutional implementation of the principle of academic freedom and the public interests so that the conditions would be created in schools of higher education to ensure all-round education of a personality and that schools of higher education would have freedom of teaching, scientific research, and creative activities, the institutions of governance that fulfil the self-governance functions of schools of higher education must be consolidated in the governance structure of schools of higher education. The imperative of the autonomy of schools of higher education, which stems from the Constitution, could be guaranteed only in this way.

Thus, the autonomy of schools of higher education, which is guaranteed in Paragraph 3 of Article 40 of the Constitution, implies the self-governance of the academic community (scientific community) of these schools, which is implemented, *inter alia*, through the governance institutions of the respective school of higher education that represent the said community of that school.

It needs to be noted that the self-governance of the academic community of schools of higher education should be related, *inter alia*, to democratic principles of government. In the context of the autonomy of schools of higher education, which is guaranteed in Paragraph 3 of Article 40 of the Constitution, the said principles include, *inter alia*, the direct participation of the academic community in, and its decisive influence on, the formation of the governance institution (institutions) of a school of higher education that is (are) vested with the most considerable powers, as well as the limitation of the number of the terms of office of members of other governance, control, and supervision institutions of the school of higher education and the number of the terms of office of persons fulfilling the functions of one-person institutions or holding the office of the head of a collegial institution. It needs to be emphasised that, in establishing the governance and organisational structure of schools of higher education, *inter alia*, when regulating the reorganisation of that structure, the legislature should pay regard to democratic principles of government and create no preconditions for their violation. A legal regulation that is not in line with these principles could create the preconditions, *inter alia*, for the state to unreasonably interfere with the governance of schools of higher education and/or to deny the self-governance of the academic community of schools of

higher education and, thus, to violate the autonomy of schools of higher education, which is guaranteed in Paragraph 3 of Article 40 of the Constitution.

[...]

... it has been mentioned that, when having regard to the autonomy of schools of higher education, the legislature has wide discretion to choose and regulate a concrete model of the organisation of science and studies, which meets best the needs of the development of the progress of the state and society in a particulate period of time. Thus, the autonomy of schools of higher education, which is consolidated in Paragraph 3 of Article 40 of the Constitution, does not deny the right of the legislature to regulate activities of schools of higher education, *inter alia*, to establish, by taking account of the interests of society and its changing needs, various types of institutions of science and studies, different limits of the autonomy of these institutions, and the grounds for their organisational and governance structure. While not denying the autonomy of schools of higher education, *inter alia*, the self-governance thereof based on democratic principles of government, the legislature may establish various models of the governance structure of schools of higher education, *inter alia*, provide for a single institution directly representing the academic community and implementing the self-governance of that community, which would be empowered to decide on all the most important questions relating to both the academic and institutional autonomy of the school of higher education, or several such institutions that would decide on the most important governance questions relating to academic autonomy and institutional autonomy separately, as well as an institution of control and supervision, which would be composed not exclusively of members of the academic community (or not of such members); the said institution of control and supervision could also perform advisory functions in the course of adopting governance decisions of the school of higher education.

... it also needs to be noted that the constitutional guarantee of the autonomy of schools of higher education implies that, in this connection, the legislature is obliged to provide for a special legal regulation on the basis of which the greater part of the legal regulation of the said relationships should be composed by means of a local legal regulation established by schools of higher education themselves (ruling of 20 March 2008 and the decision of 28 October 2009). Therefore, the general legal regulation established by means of laws and applicable to all schools of higher education should not be too much detailed and should not limit the right of schools of higher education, stemming from the principle of their autonomy, to regulate their activities by means of local legal acts.

[...]

... the provision of Paragraph 3 of Article 40 of the Constitution does not prohibit differentiating, when taking account of various important criteria, the legal status of schools of higher education of different types or the rights and limits of the autonomy of schools of higher education of the same type. When taking account of this, in the context of the constitutional justice case at issue, it needs to be noted that, while differentiating, according to various important criteria, the status of schools of higher education, account must be taken, *inter alia*, of the historical traditions and established traditions of self-governance based on democratic principles of government that are peculiar to a concrete school of higher education, as well as fostering the continuity of these traditions. The foregoing means that, *inter alia*, under Paragraph 3 of Article 40 of the Constitution, in certain cases, with respect to concrete schools of higher education, it is allowed to establish special norms defining the rights, limits of autonomy, and the organisational and governance structure of these schools, which will differ from those established by the general legal regulation provided for by means of laws with respect to all schools of higher education.

[...]

... the legislature, when implementing the constitutional powers to establish the length of powers (and grounds for the expiry thereof) of the governance bodies of a state school of higher education, is bound by the Constitution, thus, also by the principle of a state under the rule of law implying legal certainty, legal stability, and the protection of legitimate expectations; the legislature is also bound by the prohibition, arising from Paragraph 3 of Article 40 of the Constitution, on restricting the self-governance of schools of higher education and on violating the continuity of the governance bodies of schools of higher education, which implement such self-governance. Therefore, under the Constitution, the legislature may establish

only such grounds for the termination of the powers of the governance bodies (and members thereof) of schools of higher education before the expiry of the term of office thereof due to which they generally may not continue to hold office (*inter alia*, due to such a legal fact as the age established under the law, the change of the place of work, the liquidation of the school of higher education, or the essential reorganisation of the organisational and governance structure thereof). It needs to be noted that this requirement is *mutatis mutandis* applicable to members of the academic community of schools of higher education (teachers, scientific workers, and other researchers).

The legal regulation governing the conditions of admission to state-funded student places in schools of higher education

The Constitutional Court's ruling of 22 December 2011

... in the context of the constitutional principle of a state under the rule of law, the provision "Citizens who are good at their studies shall be guaranteed education at state schools of higher education free of charge" of Paragraph 3 of Article 41 of the Constitution implies, *inter alia*, the requirements for the legislature to lay down such a legal regulation that the conditions of admission to state-funded student places in schools of higher education, *inter alia*, the criteria of admission to studies and the meaning of these criteria, would be clear, consistent, and announced in advance in order that persons seeking higher education free of charge could be aware in advance of what will be required of them so that they would be able to efficiently implement their constitutional right in question.

[...]

... the right of schools of higher education to set the procedure for admission of students, *inter alia*, the conditions of their admission (criteria and the meaning (weighted value) of these criteria), is one of the essential elements of autonomy of schools of higher education. The state, *inter alia*, the institutions of the executive power thereof, in regulating and supervising the implementation of the said right, may exercise no essential influence over the independent implementation of that right provided that the constitutional human rights and freedoms, *inter alia*, the constitutional [right] of citizens who are good at their studies at state schools of higher education to education free of charge, are not violated.

... it has been mentioned that the constitutional guarantee of the autonomy of schools of higher education implies that, in this connection, the legislature must provide for a special legal regulation, while the greater part of the legal regulation of the said relationships should be composed by a local legal regulation established by schools of higher education, which must be based on the legal regulation established by the legislature; therefore, the general legal regulation established by means of laws and applicable to all schools of higher education should not be too much detailed and should not limit the right of schools of higher education, stemming from the principle of their autonomy, to regulate their activities by means of local legal acts.

... the constitutional principle of a state under the rule of law implies that a legal regulation is subject to certain obligatory requirements, *inter alia*, that legal acts may contain no provisions simultaneously regulating the same public relationships in a different manner. The foregoing implies, *inter alia*, the requirement that the implementation of the constitutional right to education free of charge at state schools of higher education, *inter alia*, the conditions of admission to state-funded student places in schools of higher education, be not simultaneously regulated in a different manner.

Thus ... in view of the imperative of balancing the interests of schools of higher education and those of society, in the context of the constitutional principle of a state under the rule of law, the guarantee of the autonomy of schools of higher education, which is consolidated in Paragraph 3 of Article 40 of the Constitution, implies, *inter alia*, that the legal regulation established by the state must create the legal preconditions for combining the legal regulation laid down by state institutions supervising the carrying out of the policy on higher education and the legal regulation laid down by schools of higher education regarding the conditions of the admission of persons to state-funded student places in schools of higher education.

Financing higher education from state budget funds

The Constitutional Court's ruling of 22 December 2011

... when interpreting the state duty to fund state schools of higher education from the state budget, the Constitutional Court held in its ruling of 20 March 2008 that, upon assignment by the state, specialists of certain areas (fields) may also be prepared at non-state schools of higher education from state budget funds; in addition, it is permitted to support citizens who study in schools of higher education of other states from state budget funds.

Thus, upon assessing the needs of society and the state and the capacities of the state, in cases where specialists of certain areas cannot be prepared at state schools of higher education due to objective reasons, they may be prepared, upon assignment by the state, not only at non-state schools of higher education, but also at foreign schools of higher education, including the branches of foreign schools of higher education established in the Republic of Lithuania.

[...]

... the provision "Citizens who are good at their studies shall be guaranteed education at state schools of higher education free of charge" of Paragraph 3 of Article 41 of the Constitution implies the right of citizens who are good at their studies, namely at state schools of higher education, to receive higher education free of charge and it implies the duty of the state to provide for the respective funds in the state budget in order to guarantee free-of-charge education for citizens who are good at their studies, namely at state schools of higher education.

[...]

On the other hand, the Constitution does not contain any prohibition precluding the state from undertaking higher financial obligations, in accordance with its capacities, to citizens studying at schools of higher education (ruling of 14 January 2002).

It also needs to be noted that the possibility for the state to undertake financial obligations higher than those arising from the provision "Citizens who are good at their studies shall be guaranteed education at state schools of higher education free of charge" of Paragraph 3 of Article 41 of the Constitution with regard to citizens studying at schools of higher education means, *inter alia*, the right of the state to guarantee free-of-charge education in some cases to citizens studying at non-state schools of higher education, i.e. to those citizens who, under Paragraph 3 of Article 41 of the Constitution, do not have the right to free-of-charge higher education and whose studies need not be financed by the state.

[...]

... whatever model of higher education funding is chosen, the legislature must pay regard to the requirement, arising from the provision "Citizens who are good at their studies shall be guaranteed education at State schools of higher education free of charge" of Paragraph 3 of Article 41 of the Constitution, that, upon assessing the needs of society and the state and the financial capacities of the state, the state must determine the need for specialists of certain areas (fields) and assign, first of all, state schools of higher education to prepare such specialists and, only in cases where specialists of certain areas (fields) cannot be prepared at state schools of higher education due to objective circumstances, the state may assign the preparation of these specialists at non-state schools of higher education.

[...]

... the provision "Citizens who are good at their studies shall be guaranteed education at state schools of higher education free of charge" of Paragraph 3 of Article 41 of the Constitution does not imply the requirement for the legislature to establish only such a model of funding higher education where all state budget funds meant for schools of higher education would be assigned to the state budget appropriations allocated individually to every state school of higher education; funds must be provided for in the state budget individually for each state school of higher education in order to implement the purposes and the mission of that school of higher education. Thus, the legislature may also choose such a model where certain state budget appropriations would be provided for higher education in general, *inter alia*, for funding the studies of citizens who are good at their studies and who are prepared to satisfy the state-established demand for specialists of certain areas (fields); during the budget year, the Government, which

is responsible for the execution of the state budget, may distribute these appropriations to schools of higher education in accordance with the established procedure, while taking account, *inter alia*, of the choice between schools of higher education made by enrolling persons.

The period during which it is necessary to assess the study results of citizens who study at state schools of higher education upon assignment by the state (Paragraph 3 of Article 40 and Paragraph 3 of Article 41 of the Constitution)

The Constitutional Court's ruling of 10 November 2014

In its ruling of 22 December 2011, the Constitutional Court noted that the legal regulation by which, in order to establish whether the study results of a person whose studies are funded by the state meet the criteria of good learning, their study results are assessed irregularly, i.e. not after each period of academic studies after which the main assessment of the knowledge of studied subjects of persons studying in schools of higher education is conducted, would not be in conformity with the provision of Paragraph 3 of Article 41 of the Constitution, whereby citizens who are good at their studies are guaranteed education at state schools of higher education free of charge.

The Constitutional Court has held on more than one occasion that, under Paragraph 3 of Article 40 of the Constitution, schools of higher education have a special legal status – they are guaranteed autonomy; the autonomy of a school of higher education is understood, *inter alia*, as the right to independently establish its procedure for its scientific activities and studies, as well as its study programmes, to consolidate them in its by-laws or statute, and to decide other related issues.

... this right of schools of higher education must be ensured by means of such a legal regulation that establishes the period of academic studies after which the main assessment of the knowledge of persons who study at schools of higher education is carried out and it is decided whether the study results of citizens who study upon assignment by the state in order to meet the state-determined need for the specialists of certain areas (fields) meet the criteria of good learning established by means of a law.

... the provision “Citizens who are good at their studies shall be guaranteed education at state schools of higher education free of charge” of Paragraph 3 of Article 41 of the Constitution, when this provision is interpreted in the context of the right of schools of higher education to independently establish the procedure for their scientific activities and studies, their study programmes, to consolidate them in their by-laws or statute, and to decide other related issues gives rise to the requirement that, in the course of establishing the period after which it is decided whether the study results of citizens who study upon assignment by the state in order to meet the state-determined need for the specialists of certain areas (fields) meet the criteria of good learning established by means of a law, account must be taken, *inter alia*, of the specific nature of the study process, the study forms, the study programmes organised in a school of higher education, the specific nature of the study subjects, and the possibility of assessing the results of the entire studies of a particular study programme and form by higher education school students of the same year of studies during the respective period.

[...]

It should be noted that an academic year is the longest possible period allowed to be established under the law and by means of acts of schools of higher education so that it would be possible to ensure the adherence to the requirements, arising out of the provision “Citizens who are good at their studies shall be guaranteed education at state schools of higher education free of charge” of Paragraph 3 of Article 41 of the Constitution, that the assessment of the study results of citizens who study at state schools of higher education upon assignment by the state must be carried out regularly, that a period must be established after which it is possible to decide whether the study results of citizens who study upon assignment by the state meet the criteria of good learning established by means of a law and that account must be taken, *inter alia*, of the possibility of assessing the results of the entire studies of a particular study programme and form by higher education school students of the same year of studies during the respective period.

The autonomy of higher education schools (Paragraph 3 of Article 40 of the Constitution); supervision over the activities of higher education schools (control over higher education quality) (Paragraph 4 of Article 40 of the Constitution)

The Constitutional Court's ruling of 19 June 2018

... the autonomy of higher education schools, which is granted to them under Paragraph 3 of Article 40 of the Constitution and which means that they have the right to autonomously determine, *inter alia*, the procedure for carrying out science and studies, as well as study programmes, does not deny the right of the state (which forms and pursues a higher education policy and is under the obligation, arising, *inter alia*, from Paragraph 4 of Article 40 of the Constitution, to ensure the effectiveness of the higher education system) to establish the quality standards for higher education provided by the institutions of science and studies, as well as the instruments for evaluating the quality of studies, the quality of their implementation, and their compliance with the established quality standards for higher education, *inter alia*, to establish the instruments periodically applied for evaluating the quality of studies. It should also be noted that as, during a certain period, needs for the progressive development of the state and society change, under Paragraph 4 of Article 40 of the Constitution, the quality standards for higher education provided by the institutions of science and studies should be changed accordingly, thus aiming to ensure that higher education schools effectively carry out their mission, which is linked to their autonomy, guaranteed under Paragraph 3 of Article 40 of the Constitution, in preparing specialists with higher education in various fields and implement their responsibility for higher education quality.

... when establishing and modifying the established quality standards for higher education provided by the institutions of science and studies, as well as when establishing and modifying the established instruments for evaluating the quality of studies, the quality of their implementation, and their compliance with the established quality standards for higher education, *inter alia*, the instruments periodically applied for evaluating the quality of studies, the legislature must respect the Constitution, *inter alia*, the requirements implied by the constitutional principles of a state under the rule of law and responsible governance, *inter alia*, the requirement not to establish such a legal regulation that would demand the impossible (*lex non cogit ad impossibilia*) and the requirement to provide for an appropriate *vacatio legis* – a reasonable period of time from the moment of the official publication of the law laying down these new standards and new instruments until its entry into force (beginning of its application), during which, *inter alia*, higher education schools would be able to properly prepare for the implementation of the modified requirements, resulting from the said law, for the quality of studies and the quality of their implementation. Otherwise, not only no regard would be paid to the constitutional principles of a state under the rule of law and responsible governance, but also the duty of the legislature, *inter alia*, implied by Paragraph 4 of Article 40 of the Constitution, to regulate the activities of higher education schools in such a way that insures higher education quality would be implemented improperly, as well as the right of higher education schools to establish the procedure for carrying out science and studies and study programmes would be violated, and no preconditions would be created for the effective implementation of their mission to train specialists with higher education in various fields and their responsibility for higher education quality; therefore, the autonomy guaranteed to higher education schools under Paragraph 3 of Article 40 of the Constitution would be disregarded; accordingly, no regard would also be paid to Paragraph 2 of Article 5 of the Constitution, under which the scope of power is limited by the Constitution.

The autonomy of higher education schools (Paragraph 3 of Article 40 of the Constitution); the right of the state to reform the system of state schools of higher education (Paragraph 4 of Article 40 of the Constitution)

The Constitutional Court's ruling of 29 June 2018

... the autonomy of higher education schools, which is guaranteed under Paragraph 3 of Article 40 of the Constitution, does not deny the right of the state (which, under the Constitution, *inter alia*, Paragraph 4

of Article 40 thereof, forms and pursues a higher education policy and has the duty to establish a system of state schools of higher education) to reform the system of state schools of higher education, *inter alia*, to reorganise or liquidate them, by taking into account the interests and changing needs of society and seeking to fulfil the constitutional obligation to ensure the effectiveness of the higher education system.

At the same time, it should be noted that, in reorganising the system of state schools of higher education, it is necessary to pay regard to the right (stemming from Paragraph 3 of Article 40 of the Constitution) of the collegial bodies directly representing the academic community of a higher education school and exercising its self-governance to autonomously solve strategic and other major issues related to the governance of the higher education school. This means that these bodies of the self-governance of state schools of higher education and other institutions that are formed or appointed by the said self-governance bodies and perform the functions of the governance of higher education schools should be given the opportunity to express their opinion and submit proposals regarding the reform of the system of state schools of higher education, *inter alia*, their reorganisation or liquidation, as well as to prepare or participate in preparing documents necessary for such reorganisation or liquidation. The autonomy of higher education schools, which is enshrined in Paragraph 3 of Article 40 of the Constitution, implies the duty of state authority institutions (which, according to the laws, perform the functions of the state as the founder of a state school of higher education and the owner of its property) to assess, by giving reasons, this opinion and proposals of the state school of higher education. However, the state authority institution that performs the functions of the state as the founder of a state school of higher education has the right, under Paragraph 4 of Article 40 of the Constitution, to take the final decision on the reform of the system of state schools of higher education, *inter alia*, the reorganisation or liquidation of a state school of higher education, even if this higher education school does not assent to this decision.

It should be emphasised that, when the state decides to carry out a reform of the system of state schools of higher education, *inter alia*, to reorganise or liquidate state schools of higher education, it is necessary, in the course of implementing these decisions, to observe the requirements arising from the Constitution, *inter alia*, from the constitutional principles of responsible governance, reasonableness, the protection of legitimate expectations, legal certainty, and legal security, as well as to respect, among other things, the legitimate interests and legitimate expectations of the members of the community of a state school of higher education, *inter alia*, those of the persons working and studying at this higher education school.

[...]

... under the Constitution, *inter alia*, Paragraph 1 of Article 5 thereof, in view of the constitutional nature of the Seimas and its functions, including the founding function, and in view of the constitutional status of the Government as the executive institution that implements state governance, manages national affairs, and is responsible for the planning and execution of the state budget, laws can establish such a legal regulation governing the adoption of decisions on founding, reorganising, or liquidating state schools of higher education whereby these decisions are adopted by the Seimas on the recommendation of the Government.

... the Seimas and the Government, as state authority institutions that form and carry out the state policy of higher education, when implementing their powers conferred on them in laws to establish and reform the system of state schools of higher education (among other things, by adopting decisions on founding state schools of higher education or other decisions exerting decisive influence on their activity, *inter alia*, decisions on their reorganisation or liquidation), must respect the constitutional principle of responsible governance, which implies the duty to evaluate and weigh, in a responsible manner, the interests and capabilities of both society and the respective communities of state schools of higher education so that the long-term effectiveness of the higher education system would be ensured. When these decisions are adopted, account should also be taken, *inter alia*, of the historical traditions of a specific higher education school and the need to maintain their continuity.

2.4.3.2. Freedom of culture, science, research, and teaching

Freedom of culture; the duty of the state to support and safeguard culture (Article 42 of the Constitution)

The Constitutional Court's ruling of 8 July 2005

... in Paragraph 1 of Article 42 of the Constitution, the principle of freedom of culture is enshrined *expressis verbis*, whereas Paragraph 2 thereof consolidates the constitutional duty of the state to support culture, as well as to protect cultural monuments and other culturally valuable objects.

The notion of culture is used in the Constitution not only in the indicated provisions of Article 42 of the Constitution, but also in other articles (paragraphs) thereof. The constitutional concept of culture is especially broad. It comprises various values held and fostered by the Nation and separate communities, the models and norms of behaviour that have originated in the society (including law, customs, and traditions), historical experience, spoken and written language, institutions, worldview and convictions, etc. On the other hand, the constitutional concept of culture (*inter alia*, Article 42) stresses the targeted, both material and spiritual, creative activity of people and its results – art, science, education, architecture, technology, etc. Cultural values are transferred to future generations, they are the foundation of the survival and continuity of the Nation and the state; thus, such values are protected and defended by the Constitution. Culture is a national value of universal importance. The Constitution obligates the state to ensure freedom of culture, to support culture, as well as to protect cultural monuments and other culturally valuable objects. The ensuring of freedom of culture, state support for culture, the protection of cultural monuments and other culturally valuable objects are a public interest and an important function of the state – the function of the state support for culture and the safeguard thereof.

In this context, it is especially necessary to stress the importance of the provisions that are set out in the Preamble to the Constitution: it is stated therein that the Lithuanian nation, having created the State of Lithuania many centuries ago, having based its legal foundations on the Lithuanian Statutes and the Constitutions of the Republic of Lithuania, having for centuries staunchly defended its freedom and independence, having preserved its spirit, native language, writing, and customs, embodying the innate right of the human being and the Nation to live and create freely in the land of their fathers and forefathers – in the independent State of Lithuania, fostering national concord in the land of Lithuania, striving for an open, just, and harmonious civil society and a state under the rule of law, by the will of the citizens of the reborn State of Lithuania, adopts and proclaims this Constitution. Thus, the Lithuanian nation has obligated the state created by it to foster the cultural values that are consolidated in the Preamble to the Constitution and not to give them up under any circumstances. All other provisions of the Constitution, including the ones that are set out in Article 42, must be interpreted in a manner that would not deviate from the imperatives deriving from the Preamble to the Constitution.

Freedom of culture, which is enshrined in Paragraph 1 of Article 42 of the Constitution, should be interpreted by taking account of the fact that, as mentioned before, the constitutional concept of culture defines the targeted material and spiritual creative activity of people and its results. In this regard, the concept of freedom of culture also comprises freedom of science and research, as well as freedom of teaching, which is also mentioned in Paragraph 1 of Article 42 of the Constitution. It should also be noted that cultural activity is not limited to scientific work, research, and teaching; thus, the concept of freedom of culture is not limited to freedom of scientific work, research, and teaching; the said concept is much broader.

The Constitution distinguishes between two aspects of freedom of culture as an innate freedom of an individual. Freedom of culture, which is enshrined in the Constitution, comprises: (1) freedom of creative activity, which in turn comprises the right of every person to freely create material and spiritual cultural values (freedom of the creative process) and the right to spread or distribute in any other way created material and spiritual cultural values (freedom of distributing products of creative activity); (2) freedom of access to culturally valuable objects, i.e. freedom of every person to use the existing culturally valuable objects.

[...]

It is possible to enjoy freedom of culture (comprising freedom of creative activity and freedom of access to culturally valuable objects), like most other constitutional rights and freedoms, not only individually, but also through the unions provided for in Article 35 of the Constitution. It is not permitted to establish any requirements for or limitations on the activity of artists, nor is it allowed to prevent them or other persons from founding associations that spread culture and/or defend material and spiritual interests of artists.

Support for culture, as well as the protection of cultural monuments and values, is a necessary condition of freedom of culture as an innate freedom of an individual (which comprises freedom of creative activity and freedom of access to culturally valuable objects). It has been mentioned that Paragraph 2 of Article 42 of the Constitution provides that the state supports culture and science, and takes care of the protection of Lithuanian historical, artistic, and other cultural monuments, as well as other culturally valuable objects. It has been held in this ruling of the Constitutional Court that the support and protection of culture by the state is an important function of the state and a public interest. It should be stressed that the provisions of Paragraph 2 of Article 42 of the Constitution are imperative: they not only specify that culture must be supported and that cultural monuments and culturally valuable objects must be protected, but they also consolidate the subject that has both the positive and negative duties to ensure that culture is supported and cultural monuments and culturally valuable objects are protected, which is namely the state.

Paragraph 2 of Article 42 of the Constitution should be interpreted by taking account of the fact that, as mentioned before, the constitutional concept of culture comprises various values held and nourished by the Nation and individual communities, including historical experience, spoken and written language, etc., as well as by taking into consideration the fact that the constitutional concept of culture stresses the targeted material and spiritual creative activity of individuals and its results, *inter alia*, art and science. In this regard, the constitutional grounds consolidated in Paragraph 2 of Article 42 of the Constitution also comprise the state duty, which is established in this paragraph, to support science, while the constitutional grounds for the protection of cultural monuments and culturally valuable objects, which are consolidated in Paragraph 2 of Article 42 of the Constitution, also comprise the state duty, which is consolidated in this paragraph, to take care of monuments of Lithuanian history and art.

The provisions of Paragraph 2 of Article 42 of the Constitution, whereby the state supports culture and science, and takes care of the protection of Lithuanian historical, artistic, and other cultural monuments, as well as other culturally valuable objects, mean that the state is constitutionally obligated to support and foster culture as a national value of universal importance – the material and spiritual creative activity and its results that should be transferred to future generations; according to the Constitution, the state must not only refrain from hindering the natural development of culture (*inter alia*, from discriminating against any creative activity), but also, by its positive decisions (*inter alia*, a legal regulation), encourage and support, by using state funds and other resources the creation, spreading, propagation, and preserving material and spiritual cultural values. It should be noted that decisions of institutions of public authority regarding state support for institutions or separate artists engaged in cultural activity, as well as separate initiatives (projects, programmes) developing culture, must be adopted while paying regard to the principles of the equality of the rights of all persons and honest competition, as well as the requirement of publicity, which are consolidated in the Constitution. The imperative of a just society and social harmony, which is consolidated in the Constitution, implies that, when supporting culture (*inter alia*, creative activity), regard must be paid to the resources and the material and financial possibilities of the state and society, and other important factors, *inter alia*, expediency.

It has been held in this ruling of the Constitutional Court that state support for culture and the protection of cultural monuments and culturally valuable objects is a public interest and an important function of the state. ... under the Constitution, there may be no such legal regulation where the state does not substantially support the system of institutions contributing to the development of culture. The constitutional consolidation of culture as a publicly important value results in the support of culture on the national scale.

The Seimas has the discretion to establish which institutions form and implement a cultural policy, as well as perform the function of state support for culture and its protection. In Lithuania (as in numerous other states), there is the established tradition that it is the Ministry of Culture that has a wide range of powers in implementing the cultural policy.

[...]

... The spread of culture is, first of all, its spread in the closest environment, in territorial surroundings among those who live in the area n the territory of which certain cultural objects are located; access to culturally valuable objects implies, first of all, their accessibility for the members and residents of a particular community on the territory of which particular cultural objects are located; cultural establishments (museums, theatres, libraries, concert organisations, etc.) function in certain administrative territorial units, localities; cultural monuments and other objects of culture are also located on certain territories; the local authorities (their institutions or officials) that administer such territories may not avoid the respective obligations related to the maintenance of these monuments, the ensuring of their accessibility, etc.; creators are also members of territorial communities; associations of creators function in particular administrative territorial units; thus, state support for creators and their associations may be rational and efficient only if account is taken of the local conditions in which creators act and their associations function, etc. Moreover, the state support and development of culture as a constitutionally protected and defended value would be impossible if culture were not developed in regions, separate parts of the territory of the state, separate self-governing territorial communities, which form part of the entire national community – the civil Nation.

The extent to which the performance of the function of supporting and protecting culture should be transferred to municipalities is subject to the state cultural policy. The legislature has wide discretion in this sphere. However, it must pay regard to the independence of municipalities and freedom of their activity within their competence defined by the Constitution and laws, the principles of balancing the interests of municipalities and those of the state, as well as the constitutional concept of local self-government.

At the same time, it should be noted that the fact that the support and protection of culture as a state function must be to a certain extent transferred to municipalities does not mean that the state (its institutions) may opt out from the performance of this function. ... under the Constitution, no matter to what extent the performance of the aforementioned function is transferred to municipalities, the state still has the duty to ensure that this function is performed properly.

[...]

... under the Constitution, the state has the duty to found and provide funding to the state institutions (establishments or enterprises, through which state functions are performed) whose objective would be taking care of the development of culture (*inter alia*, establishments or enterprises providing public cultural services), or to initiate or encourage founding and providing support for other – non-governmental – institutions the purpose of which is taking care of the development of culture ... according to the Constitution, there may be no such legal regulation where the state does not substantially maintain the system of institutions contributing to the development of culture.

Freedom of creative activity

The Constitutional Court's ruling of 8 July 2005

In its ruling of 1 July 2004, the Constitutional Court held the following: “According to the Constitution, creative activities are activities in the area of science, technology, culture or art, aimed at creating a certain result, i.e. qualitatively new, original, and specific material or spiritual values of science, technology, culture, or art, which have never existed before. Creative activities may be continuous, professional, and one-off (episodic).” The creation of material and spiritual values is impossible without freedom of creative activity.

The imperative of freedom of creative activity is consolidated not only in Article 42 of the Constitution (*inter alia*, Paragraph 1 thereof) and other articles of the Constitution (parts thereof) that consolidate human

rights and freedoms, but also in the provision of the Preamble to the Constitution that consolidates the innate right of the human being and the Nation to live and create freely in the independent State of Lithuania. The creation of material and spiritual values is the realisation of creative potential and abilities of a human being. Thus, freedom of creative activity (comprising freedom of the creative process and freedom of distributing products of creative activity) is one of the most important manifestations of freedom of self-expression, which is one of the universally recognised innate human rights and is consolidated, protected, and defended by the Constitution; on the other hand, the content of freedom of self-expression is broader than that of freedom of creative activity and is not limited by the latter. Freedom of creative activity (as freedom of self-expression in general) is inseparably related to the human right, which is consolidated in Article 25 of the Constitution, to have convictions and freely express them (freedom of convictions and their expression) and freedom of seeking, receiving, and imparting information and ideas (freedom of information), which in turn are directly interrelated.

[...]

... freedom of creative activity of every human being (which comprises freedom of the creative process and freedom of distributing products of creative activity), which is consolidated in the Constitution, has much in common with the constitutional freedoms of convictions of a human being and their expression, as well as freedom of information. Constitutional freedom of creative activity of every human being (which comprises freedom of the creative process and freedom of distributing products of creative activity), as an innate right, implies the right of every individual to realise without hindering his/her creative powers or abilities in any area of targeted creative activity of individuals, where such activity may (but not necessarily does) result in certain material or spiritual values (art, science, architecture, technology, etc.) that, from the standpoint of the Nation and/or individual communities, should be held and fostered. In this regard, freedom of creative activity is a condition of pluralism in society, as well as the richness and variety of public life.

A human being uses freedom of the creative process without any hindrance and control, he/she acts only at his/her own discretion, by following his/her own convictions. An infringement upon freedom of the creative process may also be linked with a violation of his/her right to privacy and freedom of convictions. It should be noted that the Constitution guarantees that every human being has freedom of the creative process irrespective of true or supposed talents, abilities, his/her personal or other characteristics, legal status (*inter alia*, the fact whether or not a certain individual belongs to any association of artists), as well as irrespective of possible results of creative activity of that person, i.e. irrespective of the fact whether or not these results will be regarded as cultural values (achievements) that have any permanent value. In its ruling of 1 July 2004, the Constitutional Court held the following: “The concept of creative activities, which is consolidated in the Constitution, is integral and its content does not depend, *inter alia*, on persons who are engaged in them.” According to the Constitution, the state may not discriminate any creative activity, prohibit or restrict any trend of creative activity only due to the fact that, in the opinion of the legislature, this creative activity and/or its possible results are not useful to society, though they are not harmful, either. The constitutional duty of the state to ensure freedom of the creative process for every human being comprises not only its duty not to discriminate any creative activity itself, but also to protect and defend this freedom of a human being from unlawful infringement upon it by other persons. At the same time, it should be stressed that it is not allowed to interpret freedom of the creative process of every human being, which stems from the Constitution, as the one that also implies the possibility for a human being to realise his/her creative powers and abilities when such activity violates laws or infringes the rights and freedoms of other persons; freedom of the creative process does not deny the responsibility of a person for his/her activity aimed at creating certain material or spiritual cultural values.

Freedom of distributing products of creative activity is not absolute; the limits (which are established in the Constitution) of freedom of distributing products of creative activity are narrower in comparison to freedom of the creative process. Since the constitutional concept of freedoms of information and expression of convictions does not comprise the alleged freedom (which virtually denies constitutional values) of spreading such ideas, attitudes, etc. by which national, racial, or social hatred, violence or discrimination

are incited, persons are defamed or society and its individual members are disinformed, thus, in a similar manner, the constitutional concept of freedom of distributing products of creative activity does not comprise the alleged freedom (which virtually denies constitutional values) of spreading such ideas, attitudes, etc. by which national, racial, or social hatred, violence or discrimination are incited, persons are defamed or society and its individual members are disinformed orally, in writing, in signs, or by applying other ways or means of transmitting information, i.e. it does not comprise the aforementioned alleged freedom, which denies constitutional values, to engage in the criminal actions indicated in Paragraph 4 of Article 25 of the Constitution. The Constitution does not tolerate such situations where freedom of distributing products of creative activity, as well as freedom of expression in general or any other constitutional human right or freedom, is abused by using it as a cover for actions by which certain values consolidated and protected by the Constitution are denied in essence. The state has the constitutional duty to establish such a legal regulation that would ensure that freedom of distributing products of creative activity will not be used as a cover when seeking to attain the aforementioned unconstitutional objectives. It should also be noted that, according to the Constitution, freedom of distributing products of creative activity, as well as freedom of information and freedom of the expression of convictions, may be restricted upon the procedure established by law and this may be done in cases where it is necessary to protect the values indicated in Paragraph 3 of Article 25 of the Constitution – human health, honour, human dignity, private life, and morals, or to defend the constitutional order (it may be, *inter alia*, temporarily limited by imposing martial law or by declaring a state of emergency). However, any restrictions on freedom of distributing products of creative activity must be based on the same constitutional criteria as restrictions on other fundamental human rights and freedoms: this freedom may be restricted only if this is done by means of a law; only if such restrictions are necessary in a democratic society in order to protect the rights and freedoms of other persons, the values consolidated in the Constitution, as well as constitutionally important objectives; only if the restrictions do not deny the nature and essence of rights and freedoms; and only if the constitutional principle of proportionality is followed.

By ensuring freedom of creative activity (comprising freedom of the creative process and freedom of distributing products of creative activity) and freedom of culture in general, pursuant to the Constitution, the state has not only duties with negative content (*inter alia*, not to discriminate against any creative activity and to protect this freedom from unlawful infringement upon it by other persons), but also duties with positive content.

The right to use freely culturally valuable objects

The Constitutional Court's ruling of 8 July 2005

... every human being has the right to use the existing culturally valuable objects. The Constitution consolidates freedom of access to culturally valuable objects. This freedom, which is protected and defended by the Constitution, is related to the freedom of a human being, which is consolidated in Article 25 of the Constitution, to seek and receive information and ideas, and the compulsory condition of the aforementioned freedom – freedom of a human being to form convictions and views by himself/herself, which also stems from the Constitution. Freedom of access to culturally valuable objects is also related to the imperative of open society, which is consolidated in the Constitution: if this freedom is not ensured, the striving for an open society would also be harmed.

Freedom of access to culturally valuable objects, which is enshrined in the Constitution, also implies the negative duty of the state to ensure that a human being is not hindered from free use of the existing culturally valuable objects and the positive duty of the state to adopt such decisions that would create material, organisational, and legal preconditions for making culturally valuable objects available to a larger number of people, and for allocating funds from the state budget to the protection of monuments of science, art, history, architecture, other cultural monuments, culturally valuable objects, as well as to cultural establishments (museums, theatres, libraries, organisations arranging concerts, etc.). The constitutional imperative of access to culturally valuable objects implies the duty of the state to establish and maintain such state institutions (establishments or enterprises through which state functions are performed,

inter alia, establishments or enterprises providing public cultural services) that would be aimed at maintaining, propagating, and developing national culture, the value protected and defended by the Constitution, or to initiate or encourage in another way the establishment and maintenance of other, non-governmental, institutions the purpose of which is the development of culture. The legislature has broad discretion in the area of the establishment of the grounds for the system of the cultural establishments and other institutions (*inter alia*, of the establishments or enterprises providing public cultural services) the purpose of which is to take care of the development of culture; the institutions of the executive branch, within their competence, also have broad discretion in this area; the establishment of the grounds for the system of cultural institutions (*inter alia*, of the establishments or enterprises providing public cultural services) the purpose of which is to take care of the development of culture is a matter of the cultural policy of the state. On the other hand, when forming and implementing the cultural policy, regard must be paid to the resources of the state and society, the material and financial possibilities of the state and society, as well as other important factors, *inter alia*, expediency. However, it should be stressed that, according to the Constitution, there may be no such legal regulation where the state does not substantially support the system of institutions contributing to the development of culture.

The duty of the state to ensure the protection of cultural objects of state importance (Paragraph 2 of Article 42 of the Constitution)

The Constitutional Court's ruling of 8 July 2005

When taking account of the special continuous value and significance of cultural objects of state importance, as well as the need to preserve them for future generations, the state has the constitutional duty to take care of these objects and to protect them. It should be noted that the provision of Paragraph 2 of Article 42 of the Constitution, whereby the state supports culture and science, and takes care of the protection of Lithuanian historical, artistic, and other cultural monuments, as well as other culturally valuable objects, implies that, in cases where certain cultural objects of state importance (and various other objects indicated in Paragraph 1 of Article 47 of the Constitution, except the subsurface) belong by right of ownership not to the state, but to other persons, the state is not relieved from the duty to ensure the protection of the said objects and to take care of them.

In this context, it needs to be emphasised that the constitutional status of cultural objects of state importance implies the duty of the state to keep records of cultural objects of state importance, *inter alia*, the duty of the legislature to set, by means of a law, a list of cultural objects of state importance and to mark separately which cultural objects of state importance belong to the state and which of them belong to other owners. If necessary, such a list must be revised in accordance with the established procedure by taking into account the fact whether the need exists during a particular phase of the development of society and the state to include additional cultural objects in the said list (and/or whether the need exists to exclude certain cultural objects from the aforementioned list). It should be stressed that the inclusion of cultural objects of state importance in the aforementioned list may not depend on the fact whether particular cultural objects belong by right of ownership to the state or to other legal or natural persons. It should also be stressed that the recognition that particular cultural objects that belong by right of ownership not to the state, but to other persons are ones of state importance does not mean their nationalisation.

[...]

It should be stressed that the duty of the state, which stems from the Constitution, also to take care of cultural objects of state importance that belong not to the state, but to other persons by right of ownership, and to ensure their protection may not be interpreted as the one that relieves their owners from the duty to contribute themselves to the preservation of the aforementioned cultural objects or from the duty to follow the legal regime established in regard of these cultural objects that may comprise, *inter alia*, various prohibitions, obligations, other limitations, or restrictions related to the possession, use, or disposal of these cultural objects. It should be emphasised that the aforementioned prohibitions, obligations, limitations, and restrictions must be reasoned – they must create the preconditions for ensuring the preservation of cultural objects of state importance, as well as their accessibility to the public; they must be proportionate to the

sought objective of universal importance and must not restrict the rights of an owner more than necessary in order to attain the aforementioned objectives.

The state (its institutions or officials), when exercising, under the Constitution, the powers to control how the legal regime established in regard to cultural objects of state importance is observed, also has the powers to control how the owners to whom these objects belong by right of ownership and the state or municipal institutions that possess these objects by right of trust or by other (non-property) right observe this legal regime.

In some cases, owners (e.g. natural persons) themselves may be unable to efficiently guarantee that the cultural objects of state importance belonging to them by right of ownership will be preserved. It should be emphasised that the entire burden of the preservation of the aforementioned cultural objects and taking care of them must not be placed on the owners. In this area, it is necessary to find such solutions that would ensure a fair balance between the respective duties of an owner and the state.

It should also be noted that the legislature must establish such a legal regulation that would provide the possibility of ensuring both access to cultural objects of state importance, which belong not to the state but to other persons by right of ownership, for the public (thus, also guaranteeing freedom of access to culturally valuable objects) and the protection of the rights and legal interests of an owner, where the said legal regulation would not create any preconditions for inflicting damage on the aforementioned cultural objects. In cases where cultural objects of state importance belong by right of ownership not to the state, but to other persons, the entire burden of ensuring access to the aforementioned objects of culture for the public must not be placed on owners, either. In this area, it is necessary to find solutions guaranteeing a fair balance between the rights of an owner, *inter alia*, the ownership rights and the right to privacy, and the rights of other persons.

The discretion of the legislature to choose a system of scientific degrees

The Constitutional Court's ruling of 5 May 2007

... the Constitution neither explicitly nor implicitly establishes what system of scientific degrees must be laid down in laws; *inter alia*, it does not provide whether, in Lithuania, only the scientific degree of a doctor (i.e. whether a single-level system of scientific degrees must be consolidated) or also the scientific degree of a habilitated doctor (i.e. whether a two-level system of scientific degrees must be consolidated) must be granted. Under the Constitution, in this sphere, the legislature has discretion; it may also establish the ways for the acquisition of scientific degrees. The provision that science and research are free, which is consolidated in Article 42 of the Constitution, the provision that schools of higher education are granted autonomy, which is enshrined in Paragraph 3 of Article 40, the constitutional imperatives of an open and harmonious society and other provisions of the Constitution also imply that, when establishing scientific degrees in Lithuania and ways in which they are acquired, it is necessary to give careful consideration to the opinion of the scientific and academic community, as well as that of state and other authoritative institutions of science, which unite scientists of various spheres of science. When choosing the system of scientific degrees in Lithuania and consolidating it by means of a law, it is also important to assess the experience of other countries, especially Member States of the European Union, as well as how much and in what manner this experience must and can be applied in Lithuania.

The discretion of the legislative and executive powers to choose a model of organising and managing scientific activity and establishing and assessing its results

The Constitutional Court's ruling of 5 May 2007

... [the choice of such a model of organising and managing scientific activity or establishing and assessing its results] is a function of legislation, as well as a function of the executive power, which adopts decisions and acts according to laws On the other hand, it should be stressed that the legislature, while establishing, by means of laws, the respective legal regulation (as well as executive power institutions, when regulating the respective relationships within their competence) must not only have regard to the

Constitution, but also in no way ignore the opinion of the scientific and academic community, and pay proper attention to it.

Freedom of science and research (Paragraphs 1 and 2 of Article 42 of the Constitution)

The Constitutional Court's ruling of 5 May 2007

According to Article 42 of the Constitution, culture, science and research, and teaching are free (Paragraph 1); the state supports culture and science (Paragraph 2).

Constitutional freedom of science and research is inseparable from the freedom to have convictions and express them, which is consolidated in Article 25 of the Constitution and implies, among other things, the freedom of a person to form his/her own convictions and to choose worldview values (Paragraph 1 of Article 25 of the Constitution); constitutional freedom of science and research is also inseparable from freedom of information, which is consolidated in the same article of the Constitution and means that an individual may not be hindered from seeking, receiving, and imparting information and ideas (Paragraph 2 of Article 25 of the Constitution), as well as from the striving for an open, just, and harmonious civil society and a state under the rule of law, as proclaimed in the Preamble to the Constitution, and from various other provisions of the Constitution, which consolidate, *inter alia*, human rights and freedoms, as well as democracy. The constitutional freedom of science and research is a condition for personal expression and creation, the pluralism of ideas, the maintaining and strengthening of constitutionally valuable social relationships, the social and technical progress and the progress of art, and that of pithiness and variety of public life.

The constitutional concept of freedom of science and research is very ample, it comprises various aspects of science and research. The constitutional freedom of science and research means, *inter alia*, that every person has the right to freely decide by himself/herself whether to engage in science and research, including the right to freely choose the sphere of scientific research and methods of investigating particular subjects, to form his/her scientific worldview. According to the Constitution, no scientific views may be thrust upon a person; a person may not be forced to choose a certain sphere of scientific research or be prevented from choosing it (save the exceptions stemming from the Constitution); a person may not be forced to perform certain scientific research or be prohibited from performing certain scientific research (save the exceptions stemming from the Constitution), nor he/she may be forced to publish or not to publish the results of the performed scientific research. This is a matter of the discretion of a person and his/her free choice.

The Constitution consolidates such a concept of freedom of science and research where science and research may not be made a political or ideological issue, where a scientist may not be forced to accept any scientific views and values, where scientists or researchers may not be discriminated on the basis of the fact that the area or field of their scientific research is not in line with someone's political or ideological views. A different interpretation of the concept of constitutional freedom of science and research would mean that it is also permitted to deviate from the constitutional imperatives of democracy, an open, just, and harmonious civil society, and to create conditions for violating various values, *inter alia*, human rights and freedoms, which are consolidated, protected, and defended by the Constitution.

It should be stressed that the constitutional concept of freedom of science and research implies the professional independence of the scientific community (as well as communities representing certain scientific fields), as a community united by a scientific view and professional interests, from state institutions, their independent institutionalisation and self-governance, free communication with scientific communities of other countries (*inter alia*, scientific and educational institutions). The constitutional concept of freedom of science and research (especially having taken account of the content of scientific research as an activity for which special professional knowledge is needed) also implies the duty of institutions of public power, which adopt decisions (*inter alia*, the ones that regulate by their legal acts the respective relationships) aimed at science, studies and other scientific community (*inter alia*, scientific and educational institutions), not to ignore the opinion of the scientific community and take proper account of it.

It should be noted at the same time that constitutional freedom of science and research is not absolute. According to Article 28 of the Constitution, while implementing his/her rights and exercising his/her freedoms, everyone must observe the Constitution and laws and must not restrict the rights and freedoms of other people. Thus, freedom of science and research may not be interpreted as permitting such making use of this freedom so that the rights and freedoms of other persons, other constitutional values, *inter alia*, human health, honour, and dignity, as well as morals, the security of society, and public order become violated. In its rulings, the Constitutional Court has held on more than one occasion that, according to the Constitution, it is permitted to impose limitations on human rights and freedoms if the following conditions are observed: the limitations are established by means of a law; the limitations are necessary in a democratic society in order to protect the rights and freedoms of other persons, the values consolidated in the Constitution, and the constitutionally important objectives; the limitations do not deny the nature and essence of rights and freedoms; and the constitutional principle of proportionality is followed.

In this context, it should be noted that certain limits on freedom of science and research (which, as mentioned before, is inseparable from constitutional freedom of convictions and their expression, as well as freedom of information) are established also in relation to some other provisions of the Constitution. For example, according to Article 25 of the Constitution, the freedom to express convictions, as well as to receive and impart information, may not be limited otherwise than by means of a law when this is necessary to protect human health, honour or dignity, private life, or morals, or to defend the constitutional order (Paragraph 3); the freedom to express convictions and to impart information is incompatible with criminal actions – incitement to national, racial, religious, or social hatred, incitement to violence or to discrimination, as well as defamation and disinformation (Paragraph 4). It is established in Paragraph 4 of Article 21 of the Constitution that no one may be subjected to scientific or medical experimentation without his/her knowledge and free consent. Paragraph 3 of Article 42 of the Constitution provides that the law protects and defends the spiritual and material interests of an author that are related to scientific, technical, cultural, and artistic work.

It is generally known that modern science is developed not only in individual states, it is not only part of national culture of separate countries – it transcended national boundaries long time ago. Modern science is international; no country's science and research may be isolated from the global tendencies and scientific standards, as well as scientific progress of other states. The international imparting of science, exchange in scientific information and results of scientific research is a fundamental condition of the successful development of science in every country. Therefore, the state has the duty (which stems, *inter alia*, from Paragraph 2 of Article 42 of the Constitution) to prompt and support in every possible way the imparting of Lithuanian science around the world, and representing it beyond Lithuanian borders. Moreover, upon considering the fact that, due to the occupational Soviet regime, many spheres of science in Lithuania (*inter alia*, humanities and social sciences, as well as other sciences) were separated from the global scientific trend, it is obvious that the state faces an extremely significant task of helping Lithuanian scientists and its science to integrate in the international scientific process as much as possible.

According to the Constitution, a person has the right, without any hindrance, to impart, orally, in writing, in other ways and by other means of transmitting information scientific ideas and to publish the results of scientific research, to become familiarised with publicly presented scientific works and scientific ideas of other persons. Thus, according to the Constitution, a person who is engaged in science and research may not be hindered from free communication with scientists and researchers of Lithuania and other countries.

... announcing the results of scientific research is a condition of the productivity of further scientific activity of both the entire scientific community and a particular scientist. Productive scientific activity is impossible without communication among scientists, exchange in scientific information, and sharing ideas (*inter alia*, the results of scientific activity) with scientists both from this country and foreign countries. Due to insufficient aforementioned communication, insufficient exchange in scientific information, or the insufficient sharing of ideas, scientific activity would become inefficient, while science would become provincial (first of all, in respect of methodology, as well as the reliability and importance of results, rather

than the subject of research), poor, and not fully fledged; it is more than likely that, without due exchange in scientific information, without sharing ideas with other scientists and researchers, or without integration into the international imparting of science, *inter alia*, without submitting the results of scientific research for reading and assessing to the international scientific community, scientific activity would deviate from global scientific tendencies and would fall short of global scientific standards. This would finally inflict harm on the normal life of the whole scientific and academic community as a self-governing community that is united by scientific views and professional interests. Moreover, a low level of science and research could create the preconditions for violating or even denying other constitutional values, *inter alia*, the constitutional right of a person to seek higher education, and for inflicting harm on the fulfilment of international obligations of the Republic of Lithuania.

Due to the importance of science and research to the economic and social development of society and the state, the state must inevitably form and pursue a certain scientific policy. It should be noted (especially, while taking account of the provision of Paragraph 2 of Article 42 of the Constitution, whereby the state supports culture and science) that not only such a national scientific policy where freedom of science and research is limited and the development of science is prevented in an artificial way, but also such a policy where science and research are not supported by the state, would be constitutionally unreasoned and unjustified. The Constitution in no way implies that science and research (especially fundamental research) must exist solely on the market principles; quite to the contrary, the state support for science is an imperative that is *expressis verbis* consolidated in the Constitution.

When forming and pursuing, within their competence, the scientific policy, institutions of public power may and must adopt the respective (as well as law-making) decisions on the funding etc. of separate fields of science (areas of research), scientific and educational institutions, and scientists and researchers. The content and implementation of such decisions depend not only on established objectives and goals, but also on the financial and economic capacities of the state. It should be stressed that some scientific and educational institutions or separate fields of science (areas of research) may get more funding in comparison to others, and that a different and differentiated legal regulation of the respective relationships in itself does not mean that some scientists or researchers (respective scientific and educational institutions) are unreasonably privileged or discriminated, nor does it mean that scientists or researchers are forced to choose a certain area or field of scientific research and to perform certain scientific research instead of other. It is obvious that the funds of taxpayers should be used, first of all, to support such scientific research that is perspective, productive, meets the objectives and tasks that are already faced and/or may be faced by society and the State of Lithuania, as well as assists the State of Lithuania in performing its functions that stem from the Constitution. Virtually the same can be said about such scientific research that represents Lithuanian science beyond Lithuanian borders.

... the state has certain duties that stem from the Constitution and are related to ensuring the possibility for scientists and researchers to publish results of their scientific research, including the possibility of publishing such results in Lithuania. ... it should be emphasised that such a legal regulation that would impose such conditions related to the publication of the results of scientific research on scientists or researchers who wish to continue their scientific activity or make a scientific career (e.g. to hold certain office at a scientific or educational institution) that can hardly be met due to such reasons the possibilities of eliminating which by the State of Lithuania (institutions thereof) are small or no attempts to remove the said reasons are made by the State of Lithuania (institutions thereof) would be constitutionally unreasoned. In this context, it should especially be noted that, first of all, this can be said about scientists and researchers whose research (which could even be of especially high scientific level) cannot arouse much interest within wider scientific community virtually due to the fact that the subject of research is related, first of all, with this country, Lithuania. When forming and pursuing the scientific policy of the state, it is necessary to find ways of how, without deviating from the Constitution, on the one hand, to prompt the international imparting of Lithuanian science and its sufficient representation in the world and, on the other hand, to prompt such scientific research that is significant to Lithuania even if it virtually cannot arouse much

interest among scientists and researchers of other states and could not be imparted wider on the international level.

Establishing requirements for scientists who wish to hold a certain position at state institutions of science and studies; a differentiated legal regulation of various areas and fields of science; the institution representing the scientific and academic community

The Constitutional Court's ruling of 5 May 2007

Legal acts may establish requirements that must be met by scientists who wish to hold a certain position at state schools of higher education, scientific institutes under state universities, state institutes of science, or state educational establishments. Various ways of establishing such requirements are possible. For example, according to the Constitution, it is not prohibited to establish by legal acts of the state (its institutions) certain general minimum requirements that should be met by scientists who wish to hold a certain position at the aforementioned institutions. The Constitution does not prohibit choosing and consolidating in legal acts such a way of establishing the said minimum requirements where legal acts of the state (its institutions) establish only basic (more general) requirements, which are made more detailed and specific by state schools of higher education and educational establishments in their own (i.e. local) legal acts.

[...]

The establishment of general minimum requirements for scientists who wish to hold a certain position at state schools of higher education, scientific institutes under state universities, state scientific institutes, or state educational establishments is part of the procedure of implementing the constitutional right of an individual to freely choose an occupation. It does not follow from the Constitution that such requirements (especially detailed ones) must be established precisely by means of a law, notably because such lawmaking must necessarily be based on expert knowledge and special (professional) competence; therefore, the respective relationships may also be regulated by statutory acts, *inter alia*, government resolutions that ... may not be in conflict with laws.

It should be noted that the discretion of the Government to establish general minimum requirements applicable to scientists who wish to hold a certain position at state schools of higher education, scientific institutes under state universities, state institutes of science, or state educational establishments is limited by the norms and principles of the Constitution, *inter alia*, the constitutional principle of a state under the rule of law and the principle of proportionality, which stems from and is inseparably related to the former and which requires that applicable measures established by legal acts must be proportionate to the objective sought and must not limit the rights of a person more than necessary in order to achieve a legitimate, universally significant, and constitutionally reasoned objective. When establishing the aforementioned general minimum requirements, regard must be paid to Article 14 of the Constitution, according to which Lithuanian is the state language.

It has been mentioned that modern science is international one, that it transcended national boundaries long time ago, that the international imparting of science and exchange in scientific information and the results of scientific research form a fundamental condition of the successful development of science in every country. It has also been mentioned that the state faces an especially significant task of assisting Lithuanian scientists and science of Lithuania to be integrated as much as possible in the global scientific progress.

... the Government, when establishing general minimum requirements for scientists who wish to hold a certain position at state schools of higher education, scientific institutes under state universities, state scientific institutes, or state educational establishments, may follow the provision that these requirements must assist in the enhancement of the quality of Lithuanian science and in prompting its international imparting, that they must prevent Lithuanian science from becoming detached within the borders of this country, isolated from global scientific tendencies, and not oriented to global scientific standards.

If the international imparting of Lithuanian science is not prompted, there would appear conditions for the slow-down of the development of Lithuanian science and its lagging behind the global tendencies of scientific progress; in addition, the isolation of Lithuanian science, publishing the results of scientific activity only in Lithuania would create conditions for the provincialism of Lithuanian science.

... science and scientific research constitute a special sphere of creative activity of a human being ... the areas and fields of science are very diverse and each has its own specificity. For example, physical, biomedical, and technological sciences, as well as a considerable part of research made in these sciences, are oriented towards technological progress and results that may be applied technologically; while humanities and social sciences are mostly oriented towards problems of a particular national, cultural, or political community; they reveal the historical change of this community; one of the most significant functions of such sciences is to search for social, political, ethical, aesthetic, cultural, and other meanings, to create and convey common values, as well as to sustain the value-based, cultural, and national identity of society. The said specificity of areas and fields of science also determines the specificity of the international imparting of the results of these areas and fields of science, i.e. due to their content and tasks, the greater imparting of results is common to physical, biomedical, and technological sciences; meanwhile, the international imparting of humanities and social sciences is usually more complicated, *inter alia*, due to the fact that the results of their scientific research (namely, due to their function) are often published in the official (state) language of the respective country (in Lithuania, they are often published in the Lithuanian language) and that the results of these areas of science are often not so much universal compared with the results of physical, biomedical, and technological sciences, because, first of all, they are particularly significant to the concrete national, cultural, or political community.

The increasing specificity (determined by the development of science) of certain areas and fields of science implies the need for a differentiated legal regulation. This means that the Government, when establishing minimum qualification requirements that should be met by scientists in order to become eligible for holding a certain position at state schools of higher education, scientific institutes under state universities, state institutes of science, or state educational establishments, may not establish absolutely identical requirements for all areas and fields of science; minimum qualification requirements not only may, but even must, be differentiated by taking into account the specificity of certain areas and fields of science, which also determines greater or smaller possibilities of their international imparting.

[...]

... constitutional freedom of science and scientific research, the autonomy of schools of higher education, other constitutional imperatives also imply that the respective institution (institutions) representing the scientific and academic community, which is formed from scientists elected or delegated by the scientific and academic community, may be established in Lithuania.

[...]

It is possible to reasonably presume that such an institution (institutions) representing the scientific and academic community and formed from scientists elected or delegated by the scientific and academic community should namely be deemed to be an institution that has special (professional) competence needed for the regulation of relationships in such a specific sphere of creative activity of a human being like science and/or academic activity; therefore, a law or a government resolution may establish various powers for this institution so that it could regulate the respective relationships related to science and/or academic activity, *inter alia*, the powers to set the respective requirements that should be met by scientists in order to become eligible for holding a certain position at state schools of higher education, scientific institutes under state universities, state institutes of science, or state educational establishments, as well as the powers to provide for the areas and fields of science where, due to their specificity, certain requirements established by means of a government resolution may be applied differently.

The requirement that scientists who have published scientific works that are regarded as significant may be eligible for holding a certain position at state institutions of science and studies; the requirement to have a certain amount of scientific works published in publications that are reviewed in international databases

The Constitutional Court's ruling of 5 May 2007

... the Constitution does not prohibit, but, on the contrary, especially having taken account of the membership of the Republic of Lithuania in the European Union, it even encourages the establishment, by legal acts, such requirements related to holding certain positions at state schools of higher education, scientific institutes under state universities, state institutes of science, or state educational establishments that would prompt scientists to publish their scientific works not only in Lithuanian, but also in other languages, and to arrange such publishing in authoritative scientific publications, which are recognised by scientific society and are published both in Lithuania and abroad. Publishing scientific works in foreign scientific publications and their publishing in various foreign languages encourage Lithuanian scientists to examine problems that are significant not only to Lithuanian science, but to modern science in general, to participate in the general international process of creating science, to get involved in the turnover of knowledge and ideas, to search for new and original solutions, to strive for the recognition of their scientific research not only in Lithuania, but also on the international level.

When establishing requirements that should be met by a scientist in order to become eligible for holding a certain position at state schools of higher education, scientific institutes under state universities, state institutes of science, or state educational establishments, it is allowed to establish by means of government resolutions also such a requirement that a scientist who has published scientific works that are regarded as significant may be eligible for holding certain positions at state schools of higher education, scientific institutes under state universities, state institutes of science, or state educational establishments. It is also allowed to establish by means of government resolutions such a requirement that scientists who have published scientific works in such scientific publications that are treated as authoritative by the scientific and academic community and in such scientific publications that are reviewed in various international databases may be eligible for holding a certain position at state schools of higher education, scientific institutes under state universities, state institutes of science, or state educational establishments. The fact that scientific works are published in publications that are recognised by the scientific and academic community as authoritative ones and are reviewed in various international databases gives reason to presume that these scientific works are significant.

At the same time, it should be noted that the requirements to have a certain amount of scientific works published in publications that are reviewed in international databases may not be made absolute. The importance of scientific works should be assessed not only according to the fact that they are published in scientific publications that are reviewed in various international databases, but, first of all, according to their novelty, original ideas, fundamentality, impact upon the formation of new areas and/or fields of scientific research, etc.

... as such, the fact that scientific works are not published in publications that are reviewed in international databases does not mean that these scientific works are insignificant.

Consequently, if legal acts stipulate that certain positions at state schools of higher education, scientific institutes under state universities, state institutes of science, or state educational establishments may be held by scientists who have published scientific works in publications that are reviewed in international databases, such a requirement may not be made an absolute one; the said legal acts must at the same time establish an alternative – other requirements related to the significance of scientific works upon meeting which a scientists may hold a certain position.

It should be noted that, in view of the fact that the discussed requirements are related to the possibility of holding a certain position at state schools of higher education, scientific institutes under state universities, state institutes of science, or state educational establishments, the aforementioned alternative requirements should be such that would ensure that certain positions in the said institutions would be held by scientists

holding the qualification necessary for that purpose. The most important criterion proving the competence of a scientist is, of course, the significance of scientific works published by him/her; this importance may not be determined solely according to the fact whether these scientific works were published specifically in publications that are reviewed in international databases. It is obvious that really significant scientific works are also often published even in very authoritative scientific publications recognised by scientific society at large that are not reviewed in international databases; besides, really significant scientific works are also often published in other ways (e.g. by issuing a significant monograph or another publication, collections of articles by various authors, in which important problems are examined, etc.).

It should also be noted that the system of requirements that should be met by scientists in order to become eligible for holding a certain position at state schools of higher education, scientific institutes under state universities, state institutes of science, or state educational establishments may not be such where the Lithuanian language is treated in such a way that scientific works published in this language are considered not fully fledged works, or are considered second-class works, as this would basically mean that it is the Lithuanian language – a special constitutional value – that is not a fully fledged language or is a second-class language. This would not be in line with the constitutional status of Lithuanian as the state language.

On the other hand, the fact that it has been held in this ruling of the Constitutional Court that the requirements to have a certain amount of scientific works published in publications that are reviewed in international databases may not become absolute ones does not mean and must not be interpreted in a manner that they are negative as such and that the said requirements violate freedom of science and scientific research, the autonomy of schools of higher education, the status of Lithuanian as the state language, or other constitutional values, and that the said requirements as such are incompatible with the Constitution. As mentioned before, the said requirements may be established, but they may not be made absolute ones.

The areas and fields of science, including humanities and social science, are very diverse and have their own specificity. The particularities of humanities and social sciences are especially distinct. Only due to the reason that ... humanities and social sciences are oriented towards national, cultural, and political problems of a certain community, that the results of their scientific research are often published in the official (state) language of the respective country, as well as that the results of these sciences are, first of all, important specifically to the respective national, cultural, or political community, the possibilities of international imparting of these sciences, including publishing in publications that are reviewed in international databases, are quite often more complicated and limited.

The specificity of areas and fields of science, especially the particularities of humanities and social sciences, which determine the fact that the possibilities of scientists who work in these areas and fields of science to publish the results of scientific research in publications that are reviewed in international databases are often more complicated and limited, implies the necessity to establish a differentiated legal regulation of the respective relationships. Such a differentiated legal regulation means that the requirements that must be met by scientists in order to become eligible for a certain position at state schools of higher education, scientific institutes under state universities, state institutes of science, or state educational establishments may not be absolutely identical in regard to publishing scientific works and the results of scientific research in all areas and fields of science, including their publishing in publications that are reviewed in international databases.

... the aforementioned differentiated legal regulation must be applied to humanities and social sciences.

It should be noted that the Constitution does not prohibit the consolidation of such a legal regulation where the Government, upon taking account of the specificity of areas and fields of science, as well as upon taking account of the possibilities of publishing scientific works and results of scientific research in publications that are reviewed in international databases, establishes itself, by its resolution, differentiated minimum requirements applicable to various areas or fields of science, which should be met by scientists in order to become eligible for certain positions at state schools of higher education, scientific institutes under state universities, state institutes of science, or state educational establishments. It has been

mentioned that one of such requirements could be the requirement to have scientific works published in publications that are reviewed in international databases, but this requirement, as already stated, may not be made absolute.

On the other hand, taking account of the fact that, in order to establish the areas and fields of science in which the possibilities of publishing the results of conducted scientific research in publications that are reviewed in international databases are more difficult and limited due to the specificity of the areas and fields of science and that special (professional) competence is necessary, it is also allowed to establish, by means of a government resolution, such a legal regulation that the institution (institutions) (which has (have) already been indicated in this ruling of the Constitutional Court) that represent(s) the scientific and academic community and is (are) composed of scientists with solid credentials elected from the scientific and academic community or delegated by it would establish the aforementioned areas and fields of science in which the respective requirements may be applied differently.

It should be especially stressed in the constitutional justice case at issue that the requirements established by the Government to publish scientific works in publications that are reviewed in international databases is only one of the ways permitted by the Constitution by which it is possible to prompt the imparting of Lithuanian science in the world and the participation of Lithuanian scientists in the international scientific creative process.

This way may not be made an absolute one. If this way is chosen, legal acts may and must consolidate other ways of prompting the imparting of Lithuanian science in the world. It is the competence of the respective law-making subjects to choose and establish such methods; they have wide discretion in this area.

[...]

At the same time, attention must be paid to the fact that, while establishing in legal acts also such requirements that a scientist who wishes to hold a certain position at state schools of higher education, scientific institutes under state universities, state scientific institutes, or state scientific establishments must have a certain amount of scientific works published in publications that are assessed in international databases, as well as in the publications that are included in the databases of the Institute for Scientific Information, account must also be taken of the fact that there are various international databases in the world in which various scientific publications are assessed. Thus, upon stipulating that a scientist who wishes to hold a certain position at state schools of higher education, scientific institutes under state universities, state scientific institutes, or state scientific establishments must have a certain amount of scientific works published in publications that are assessed in international databases, such a legal regulation implies, *inter alia*, that, while deciding which international databases are deemed to be recognised in Lithuania, account must be taken of the specificity of the areas and fields of science, particularly of humanities and social sciences, where the said specificity determines more difficult or even limited international imparting possibilities of the scientific works of scientists who work in these spheres of science.

It also needs to be noted that, upon consolidating in the legal acts also such a requirement that a scientist who wishes to hold a certain position at a state school of higher education, a scientific institute under state universities, a state scientific institutes, or a state scientific establishment must have a certain amount (number) of scientific works published in publications that are assessed in international databases, it is also allowed to establish such a legal regulation whereby the respective international databases, particularly of humanities and social sciences, may also be created in Lithuania – the scientific articles of scientists who work in the areas of humanities and social sciences that are published in publications assessed in such databases may be regarded as articles upon publishing which a certain scientist may seek to hold the position of a professor or a chief scientific worker. If such a requirement is consolidated, founding the said international databases in Lithuania must even be prompted.

It needs to be noted that the list of the international databases that are deemed to be recognised ... must be constantly revised and updated. When approving the list of the international databases that are deemed to be recognised in Lithuania, it is also necessary to specify the list of publications that are assessed in the

said specific databases (at the respective period of time). Such a legal regulation would create the possibilities for scientists who wish to hold certain positions in state schools of higher education, scientific institutes under state universities, state scientific institutes, or state scientific establishments to know in advance which publications that represent the area or field of their science are assessed in the international databases that are deemed to be recognised in Lithuania; this would, in its turn, encourage scientists to publish their scientific works specifically in such publications where their scientific works published in the said publications would be regarded as meeting the requirements established in legal acts so that they could be eligible for holding certain positions at state schools of higher education, scientific institutes under state universities, state scientific institutes, or state scientific establishments.

Establishing the procedure for verifying the qualification of a scientist

The Constitutional Court's ruling of 5 May 2007

The provision of Article 42 of the Constitution, whereby science and research are free, the provision of Paragraph 3 of Article 40 of the Constitution, whereby schools of higher education are granted autonomy, the constitutional imperatives of an open and harmonious society, and other provisions of the Constitution also imply that, when deciding whether or not it is established in a law that it is necessary to lay down the procedure for verifying (assessing) the fact whether the competence of a scientist is sufficient so that he/she may be eligible for holding certain positions at state schools of higher education, scientific institutes under state universities, state institutes of science, or state educational establishments, it is necessary to give due consideration to the opinion of the scientific and academic community, as well as that of state and other authoritative institutions of science, which unite scientists of various spheres of science. When establishing this, it is also important to assess the experience of other countries, especially the Members of the European Union, the tendencies that prevail in them, as well as how much and in what manner this experience must and can be applied in Lithuania. When deciding what requirements should be met by a scientist in order to make it possible to hold that his/her competence is such that allows him/her to become eligible for holding certain positions at state schools of higher education, scientific institutes under state universities, state institutes of science, or state educational establishments, it is necessary to give due consideration to the opinion of state and other authoritative institutions of science, which unite scientists of various areas and fields of science.

The legislature may consolidate in a law that it is necessary to establish a procedure in the course of the application of which it is verified (assessed) whether the qualification of a scientist is such that he/she may be eligible for holding certain positions at state schools of higher education, scientific institutes under state universities, state institutes of science, or state educational establishments. However, it does not follow from the Constitution that the said requirements and procedure for verifying the qualification of a scientist must be consolidated solely by means of a law. The establishment of such requirements, if, in the course of their establishment, regard is paid to the discussed imperatives that arise from the Constitution, is virtually part of the procedure for implementing the human right to be eligible for holding a certain position at state schools of higher education, scientific institutes under state universities, state institutes of science, or state educational establishments; therefore, such relationships may also be regulated by means of government resolutions – substatutory legal acts. In addition, if such powers stem from laws and/or government resolutions based on them, the said relationships may be regulated by means of substatutory legal acts that are issued by an institution (institutions) (which also has (have) special (professional) competence necessary to regulate the relationships in the sphere of science and/or academic activity and which has (have) the powers to regulate certain relationships linked with science and/or academic activity, where such competence is established for it by means of a law or by means of a government resolution) that represents (represent) the scientific and academic community and is (are) formed from scientists elected or delegated by the scientific and academic community.

In the course of regulating these relationships (no matter by what legal acts they are regulated), regard must be paid to the norms and principles of the Constitution, *inter alia*, the constitutional principle of a

state under the rule of law including, among other things, legal certainty, legal clarity, and legal security, which implies the necessity to ensure the protection of legitimate expectations.

Assessing the qualification of a scientist

The Constitutional Court's ruling of 5 May 2007

... when forming and pursuing the scientific policy of the state, it is necessary to find ways of how, without deviating from the Constitution, on the one hand, to prompt the international imparting of Lithuanian science and its sufficient representation in the world and, on the other hand, to prompt such scientific research that is significant to Lithuania even if it virtually cannot arouse much interest among scientists and researchers of other states and could not be imparted wider on the international level. It has been also held that, under the Constitution, it is not prohibited to establish in legal acts of the state (its institutions) certain general minimum requirements that should be fulfilled by scientists who seek to hold certain positions in state schools of higher education, scientific institutes under state universities, state scientific institutes, or state scientific establishments, and that one of such requirements may also be the requirement to have a certain amount of scientific works published in such publications that are assessed in international databases.

... the system of requirements that must be fulfilled by a scientist so that he/she may be eligible for holding the position of a professor or a chief scientific fellow must be such that would allow assessing whether the qualification of a scientist is really such that he/she is ready to hold the said positions of a professor or a chief scientific fellow. One of the requirements that must be fulfilled by a scientist may also be the requirement to have a certain amount of scientific works published in such publications that are reviewed in international databases.

However, it should be noted once again that these requirements (which are laid down in legal acts), whereby a scientist who seeks to hold certain positions in state schools of higher education, scientific institutes under state universities, state scientific institutes, or state scientific establishments must have a certain amount of scientific works published in such publications that are reviewed in international databases, should not be regarded as absolute ones. The said formal requirements to have a certain amount of scientific works published in such publications that are reviewed in international databases may be one of especially important criteria for the significance of scientific works, thus, also for the assessment of the qualification of a scientist. However, solely the formal indicators such as a certain amount of published scientific works, their publishing in namely such publications that are reviewed in international databases, a certain period of time during which scientific works must be published, etc., or such a formal requirement that a publication must be reviewed before publishing it, etc. not always allow revealing the real qualification of a scientist and the value and significance of his/her scientific works. The system of requirements that must be fulfilled by a scientist so that he/her may be eligible for holding certain positions at state schools of higher education, scientific institutes under state universities, state scientific institutes, or state scientific establishments must be such that it would be possible to decide on the qualification and significance of the scientific work of such a scientist not only from the amount of his/her published scientific works, as well as not only from the fact during which period of time these scientific works (scientific articles) are published and in which scientific publications (which are reviewed in international databases or which are not reviewed in them) they are published, but, first of all, according to the value and significance of the scientific works published by the said scientist, *inter alia*, according to their novelty, originality, fundamentality, influence on the formation of the new areas of scientific research, etc. ... as such, the fact that scientific works are not published in publications that are reviewed in international databases does not mean that these scientific works are insignificant. In order to assess the value, significance and quality of scientific works, it is not enough that they meet some established formal requirements of imparting, including international imparting – in order to do that, first of all, an extremely qualified and impartial expert assessment of scientific works, including those that are published in publications that are reviewed in international databases, is necessary. When creating a system of the expert assessment of scientific works, it is necessary to give due consideration to the opinion of the scientific and

academic community; in addition, the Constitution does not prohibit any such a legal regulation whereby an institution (or institutions) that genuinely represents (represent) the scientific and academic community and is (are) composed of scientists with solid credentials would have the powers to establish the respective systems of the expert assessment of scientific works, to lay down the criteria for assessing scientific works, and to regulate other most important relationships in this connection. Especially, when account is taken of the principle of the autonomy of schools of higher education, as consolidated in the Constitution, also such a legal regulation that would allow schools of higher education, while taking account of the general main requirements established by such an institution (or institutions) that genuinely represents (represent) the scientific and academic community and is (are) composed of scientists with solid credentials, to establish themselves specific criteria for assessing the qualification of a scientist would be compatible with the Constitution.

Qualification requirements for scientists who seek to hold a certain position at state institutions of science and studies

The Constitutional Court's decision of 1 February 2008

In its ruling of 5 May 2007, the Constitutional Court formulated a broad official constitutional doctrine of freedom of science and research, where the said doctrine is related to requirements, established by means of legal acts, that must be met by persons who work in the areas of humanities and social sciences and who are eligible for holding certain positions in state schools of higher education and other state scientific institutions, and where the said doctrine is also related to the autonomy of schools of higher education, which is consolidated in the Constitution. In addition, the said ruling emphasised the professional independence of the scientific community (as well as the communities representing certain scientific fields), as a community united by a scientific approach and professional interests, from state institutions, their independent institutionalisation and self-governance, free communication with scientific communities of other countries (*inter alia*, scientific and educational institutions). The state forms and pursues a certain scientific policy; however, scientific research is an activity that demands special professional knowledge; therefore, the institutions of public power that adopt decisions addressed to science, studies, or other scientific community (*inter alia*, institutions of science and studies), when regulating the respective relationships in their legal acts, must not ignore in any way and must pay sufficient attention to the opinion of the scientific community. Legal acts may establish qualification requirements that must be met by scientists who wish to hold a certain position at state schools of higher education, scientific institutes under state universities, state institutes of science, or state educational establishments; various ways of establishing such requirements are possible, *inter alia*, legal acts may establish such minimum requirements that must be fulfilled by scientists who seek to hold certain positions in the aforementioned institutions; however, legal acts of the state (its institutions) may establish only basic (more general) requirements, which are in turn made more detailed and specific by state schools of higher education and educational establishments in their own (i.e. local) legal acts. Still, the discretion of the Government to establish general minimum requirements (which must help to improve the quality of science of Lithuania and to promote its international imparting) applicable to scientists who seek to hold a certain position at state schools of higher education, scientific institutes under state universities, state scientific institutes, or state educational establishments is limited by the norms and principles of the Constitution, *inter alia*, the constitutional principle of proportionality. For instance, such a legal regulation that would impose such conditions related to the publication of the results of scientific research on scientists or researchers who wish to continue their scientific activity or make a scientific career (e.g. to hold certain office at a scientific or educational institution) that can hardly be met due to such reasons the possibilities of eliminating which by the State of Lithuania (institutions thereof) are small or no attempts to eliminate the said reasons are made by the State of Lithuania (institutions thereof) would be constitutionally unreasoned. The said ruling of the Constitutional Court also emphasised the need for a differentiated legal regulation: minimum qualification requirements not only may, but even must, be differentiated by taking into account the

specificity of certain areas and fields of science, which also determine greater or smaller possibilities of their international imparting.

It was also held in the Constitutional Court's ruling of 5 May 2007 that, when establishing requirements that must be met by a scientist in order to become eligible for aspiring to a certain position at state schools of higher education, scientific institutes under state universities, state scientific institutes, or state educational establishments, it is also allowed to establish by means of government resolutions such a requirement whereby scientists who have published scientific works in such scientific publications that are reviewed in various international databases (thus, those scientific works are regarded by the scientific and academic community as authoritative ones and this gives reason to presume that these scientific works are important) may be eligible for holding certain positions at state schools of higher education, scientific institutes under state universities, state scientific institutes, or state educational establishments. However, such requirements may not be made absolute, since, as such, the fact that scientific works are not published in publications that are reviewed in international databases does not mean that these scientific works are insignificant: the importance of scientific works should be assessed not only according to the fact that they are published in scientific publications that are reviewed in various international databases, but, first of all, according to their novelty, original ideas, fundamentality, impact upon formation of new areas and/or fields of scientific research, etc., but not according to the said formal criterion only. Therefore, if the said formal requirement is established, the said acts must also at the same time establish an alternative – other requirements related to the importance of scientific works upon meeting which scientists would be allowed to hold a certain position. The system of requirements that should be met by scientists in order to become eligible for holding a certain position at state schools of higher education, scientific institutes under state universities, state institutes of science, or state educational establishments may not be such where scientific works published in Lithuanian are considered not fully fledged works, or are considered second-class works; due to the fact that the possibilities of scientists who work in the areas and fields of humanities and social sciences to publish scientific works and the results of scientific research in publications that are reviewed in international databases are often more complicated and limited, solely the formal indicators such as a certain amount of published scientific works, their publishing in namely such publications that are assessed in international databases, a certain period of time during which scientific works must be published, etc., or such a formal requirement that a publication must be reviewed before publishing it, etc. not always allow revealing the real qualification of a scientist and the value and importance of his/her scientific works – in order to do that, first of all, an extremely qualified and impartial expert assessment of scientific works, including those that are published in publications that are assessed in international databases, is necessary. When creating a system of the expert assessment of scientific works, it is necessary to give due consideration to the opinion of the scientific and academic community; in addition, the Constitution does not prohibit any such a legal regulation whereby an institution (or institutions) that genuinely represents (represent) the scientific and academic community and is (are) composed of scientists with solid credentials would have the powers to establish the respective systems of the expert assessment of scientific works, to lay down the criteria for assessing scientific works, and to regulate other most important relationships in this connection; especially, when account is taken of the principle of the autonomy of schools of higher education, as consolidated in the Constitution, also such a legal regulation that would allow schools of higher education, while taking account of the general main requirements established by such an institution (or institutions) that genuinely represents (represent) the scientific and academic community and is (are) composed of scientists with solid credentials, to establish themselves specific criteria for assessing the qualification of a scientist would be compatible with the Constitution.

The right of schools of higher education to establish concrete criteria for assessing the qualification of scientists and the responsibility of schools of higher education for the quality of higher education

The Constitutional Court's decision of 1 February 2008

... especially, when account is taken of the principle of the autonomy of schools of higher education, as consolidated in the Constitution, also such a legal regulation that would allow schools of higher education, while taking account of the general main requirements established by such an institution (or institutions) that genuinely represents (represent) the scientific and academic community and is (are) composed of scientists with solid credentials, to establish themselves specific criteria for assessing the qualification of a scientist would be compatible with the Constitution.

Consequently, the fact that legal acts adopted by the Government establish criteria by following which the importance of scientific works of persons who work in the areas of humanities and social sciences is assessed when it is decided as regards the habilitation of a certain scientist or his/her suitability to hold a certain position in a state institution of science and studies does not mean that schools of higher education do not have the right also to establish additional criteria for assessing such scientific works where the said criteria would allow assessing the value of scientific works published by a scientist, *inter alia*, according to their novelty, original ideas, fundamentality, impact upon formation of new areas and/or fields of scientific research, etc.

[...]

However, it needs to be emphasised that the autonomy of schools of higher education consolidated in the Constitution does not at all imply that the powers to establish concrete criteria for assessing the qualification of a scientist (by taking account of the main general requirements established by an institution that genuinely represents the scientific and academic community and is composed of scientists with solid credentials) may be granted to all schools of higher education. Quite to the contrary, the rights enjoyed by schools of higher education may be differentiated (by having regard to the Constitution) according to various important criteria, *inter alia*, according to the status of such schools of higher education (i.e. whether they are universities or not), the level of higher education provided by them to persons that study there, the syllabi they follow, their scientific potential, etc.

In addition, the fact that schools of higher education have the right to establish additional criteria for assessing scientific works by following which the importance of scientific works of persons who work in the areas of humanities and social sciences is assessed when it is decided as regards the habilitation of a certain scientist or his/her suitability to hold a certain position in a state institution of science and studies does not mean that it is allowed to disregard formal requirements for persons who seek the so-called habilitation and who work in the areas of humanities and social sciences, as well as formal general minimum qualification requirements (which are established by the state (its institutions) within its (their) competence (also, by having regard to the Constitution and the official constitutional doctrine set out in the Constitutional Court's ruling of 5 May 2007)) that must be met by scientists aspiring to hold the position of a professor or a chief scientific fellow.

[...]

... when interpreting and applying [the respective] ... provisions of legal acts and establishing the respective local legal regulation, as well as that related to the requirements for persons who seek the so-called habilitation and who work in the areas of humanities and social sciences, as well as with the qualification requirements that must be met by scientists aspiring to the position of a professor or a chief scientific fellow ... schools of higher education may not create any preconditions for situations where persons whose scientific works are not significant (thus, their qualification is not sufficient for the respective position) could fulfil the so-called habilitation procedure and hold the position of a professor and a chief scientific fellow. If such preconditions were created, scientific titles and the value of scientific works could really become devalued (not only in certain schools, but also in the entire country), the level

of science of Lithuania would go into decline, and the quality of studies in schools of higher education would become worse ...

It needs to be especially emphasised that, under the Constitution, schools of higher education (both state and non-state ones) not only make use of their autonomy, but also fulfil an important social function – they provide higher education, while the provision of proper and quality higher education is impossible without scientific research of high level; thus, the provision of higher education is impossible without highly-qualified scientists. The autonomy of schools of higher education must be related to their mission to prepare specialists of various spheres who have acquired higher education, who meet the requirements of society and the state; thus, the autonomy of schools of higher education must also be related to great responsibility of schools of higher education for the quality of higher education.

The creation of the preconditions for devaluing scientific titles and scientific works would at the same time mean that preconditions are also created for the violation of the rights of other persons and, first of all, the human right, which stems from the Constitution, to seek higher education; the said right implies, as it was held by the Constitutional Court in its rulings of 14 January 2002 and 7 June 2007, the duty of the state to create the preconditions for implementing this right. It needs to be held that the said constitutional human right implies the duty of schools of higher education to provide not any education, but proper and quality education to students; the same constitutional right also implies the right of students to demand precisely this proper and quality higher education from the schools of higher education in which they are studying. If these constitutional imperatives were disregarded (while the creation of the preconditions for devaluing scientific titles and the value of scientific works would precisely mean that these imperatives are disregarded), there would be grounds for doubts whether a certain school of higher education reasonably and properly makes use of the autonomy consolidated in the Constitution and whether its status as a school of higher education is reasonably and lawfully recognised.

Criteria for assessing the significance of scientific works of persons working in humanities and social sciences

The Constitutional Court's decision of 1 February 2008

... in the course of assessing the importance of scientific works of persons who work in the areas of humanities and social sciences when it is decided on the habilitation of a certain scientist or his/her suitability to hold a certain position in a state institution of science and studies no formal (quantitative) requirements (*inter alia*, the amount of published scientific works, their volume, in what publications they were published, the time period within which scientific works must be published, the review of the publication before it is published, etc.) may be made absolute ... legal acts must also establish alternative criteria allowing an assessment of the value and significance of works published by a scientist, *inter alia*, according to their novelty, original ideas, fundamentality, impact on the formation of new areas and/or fields of scientific research, etc. ... While establishing a legal regulation linked with requirements for persons who seek the so-called habilitation and who work in the areas of humanities and social sciences, as well as with qualification requirements that must be met by scientists aspiring to hold the position of a professor or a chief scientific fellow, regard must be paid to the autonomy of schools of higher education, which is consolidated in the Constitution. ...

At the same time, it needs to be emphasised that it is not allowed to create the preconditions for devaluing scientific titles and the value of scientific works, thus, also for worsening the quality of studies in schools of higher education. In addition, the provisions set out herein do not mean that it is allowed to disregard formal requirements, which are established by the state (its institutions) within its competence, for persons who seek the so-called habilitation and who work in the areas of humanities and social sciences, as well as formal general minimum qualification requirements that must be met by scientists aspiring to hold the position of a professor or a chief scientific fellow.

The powers of the Government to establish the criteria for assessing the significance of scientific works of persons working in humanities and social sciences

The Constitutional Court's decision of 1 February 2008

... the discretion of the Government to establish criteria by following which the importance of scientific works of persons who work in the spheres of humanities and social sciences is assessed when it is decided on the habilitation of a certain scientist or his/her suitability to hold a certain position in a state institution of science and studies is limited – such discretion is limited by the Constitution. Resolutions of the Government must be based on laws; they may not contain any provisions competing with the legal regulation established in laws. The Government, when establishing the said criteria, must also pay regard to the autonomy of schools of higher education, which is consolidated in the Constitution. The Government may not establish only formal criteria by following which the importance of scientific works of persons who work in the spheres of humanities and social sciences is assessed when it is decided on the habilitation of a certain scientist or his/her suitability to hold a certain position in a state institution of science and studies, and the Government must not fail to establish such criteria for assessing scientific works that would allow the assessment of the value of scientific works published by scientists, *inter alia*, according to their novelty, original ideas, fundamentality, impact on the formation of new areas and/or fields of scientific research, etc.; in addition, the Government must not fail to grant the right to schools of higher education to establish additional criteria for assessing scientific works, where such criteria would also allow the assessment of the value of scientific works published by scientists, *inter alia*, according to their novelty, original ideas, fundamentality, impact on the formation of new areas and/or fields of scientific research, etc. Under the Constitution, it is also allowed to establish such a legal regulation where the said criteria are established by schools of higher education themselves while taking account of the general main requirements established by such an institution (or institutions) that genuinely represents (represent) the scientific and academic community and is (are) composed of scientists with solid credentials It also needs to be held that the powers of the Government to establish the said criteria also do not deny the powers of schools of higher education to interpret the legal regulation established by the Government in a manner that would also allow assessing the value and importance of published scientific works of a scientist, *inter alia*, according to their novelty, original ideas, fundamentality, impact on the formation of new areas and/or fields of scientific research, etc.

At the same time, it needs to be noted that schools of higher education must pay regard to the said formal criteria (which by no means may be made absolute and which must have alternatives (which allow an assessment of the value of the scientific works published by scientists, *inter alia*, according to their novelty, original ideas, fundamentality, impact upon the formation of new areas and/or fields of scientific research, etc.)) established by the Government within its competence.

The expert assessment of scientific works

The Constitutional Court's decision of 1 February 2008

... various systems of the expert assessment of scientific works (also systems of the assessment of the importance of scientific works of persons who work in the areas of humanities and social sciences when it is decided on the habilitation of a certain scientist or his/her suitability to hold a certain position in a state institution of science and studies) may be established.

The Constitutional Court's ruling of 5 May 2007 provided no interpretation as to what systems of the assessment there should or could be; this decision of the Constitutional Court will provide no interpretation with regard to this issue, either On the other hand, it was held that solely the formal indicators (such as a certain amount of published scientific works, their publishing in namely such publications that are reviewed in international databases, a certain period of time within which scientific works must be published, etc., or such a formal requirement that a publication must be reviewed before publishing it, etc.) not always allow revealing the real qualification of a scientist and the value and importance of his/her scientific works; it was also held that, in order to do that, an extremely qualified and impartial expert assessment of scientific works, including those that are published in publications that are reviewed in

international databases, is necessary precisely because the possibilities of scientists who work in the areas and fields of humanities and social sciences to publish scientific works and the results of scientific research in publications that are reviewed in international databases are often more complicated and limited. It was also held that, when creating a system of the expert assessment of scientific works, it is necessary to give due consideration to the opinion of the scientific and academic community.

... it should also be held that a legal regulation linked with the said system of the expert assessment may also be established by the Government; in addition, it is allowed to establish such a legal regulation where a system (or systems) of expert assessment is (are) established and the main general requirements are established by an institution (or institutions) that genuinely represents (represent) the scientific and academic community and is (are) composed of scientists with solid credentials; however, it is also allowed to establish such a legal regulation where the said system (or systems) is (are) established by schools of higher education themselves by taking account of the general main requirements established by such an institution (institutions) that genuinely represents (represent) the scientific and academic community and is (are) composed of scientists with solid credentials ...

However, no matter which subject established a legal regulation linked with the system of the expert assessment of scientific works (including the system of the assessment of the importance of scientific works of persons who work in the areas of humanities and social sciences when it is decided on the habilitation of a certain scientist or his/her suitability to hold a certain position in a state institution of science and studies), it is necessary to ensure that the importance of published scientific works of scientists (including scientists who work in the areas of humanities and social sciences) when it is decided on the habilitation of a certain scientist or his/her suitability to hold a certain position in a state institution of science and studies would be assessed, *inter alia*, according to their novelty, original ideas, fundamentality, impact upon the formation of new areas and/or fields of scientific research, etc.

The duty of the state to support culture (Paragraph 2 of Article 42 of the Constitution)

The Constitutional Court's ruling of 25 June 2019

... Paragraph 2 of Article 42 of the Constitution, *inter alia*, provides that “the state supports culture ... and takes care of the protection of ... artistic, and other cultural monuments, as well as other culturally valuable objects”. While interpreting Paragraph 2 of Article 42 of the Constitution in its ruling of 8 July 2005, the Constitutional Court held the following:

– ensuring freedom of culture, state support for culture, and the protection of cultural monuments and other culturally valuable objects constitute a public interest and an important function of the state; support for culture, as well as the protection of cultural monuments and other culturally valuable objects, is a necessary condition for freedom of culture as an innate freedom of an individual (which comprises freedom of creative activity and freedom of access to culturally valuable objects);

– the state is constitutionally obliged to support and foster culture as a national value of universal importance – the material and spiritual creative activity and its results, which should be passed on to future generations; according to the Constitution, the state must not only refrain from hindering the natural development of culture, but it must also encourage it by its positive decisions (*inter alia*, a legal regulation), and must support the creation, spread, promotion, and preserving of material and spiritual cultural values by using state funds or other resources;

– the constitutional imperative of access to culturally valuable objects implies the duty of the state to establish and maintain such state institutions (establishments or enterprises through which state functions are performed) whose objective is taking care of the development of culture (*inter alia*, establishments or enterprises providing public cultural services), or in other ways to initiate and encourage founding and maintaining other – non-state – institutions the purpose of which is taking care of the development of culture.

... the Constitution, *inter alia*, Paragraph 2 of Article 42 thereof, gives rise to the duty of the legislature, in order to implement the public interest, i.e. to ensure freedom of culture and state support for culture, to create, by means of a legal regulation, the preconditions for, *inter alia*, state (municipal)

establishments providing public cultural services to effectively foster and develop culture as a national value of universal importance. In this regard, the Constitution, *inter alia*, Paragraph 1 of Article 48 thereof, which consolidates the right of everyone to freely choose an occupation, gives rise to the powers of the legislature to establish certain qualification and reputation requirements and/or other requirements for persons working in these establishments and, the more so, for persons who are heads of these establishments in cases where the legislature regulates the activity of state (municipal) establishments providing public cultural services. ... these powers must be exercised in accordance with the Constitution, *inter alia*, with the imperatives stemming from the constitutional principle of a state under the rule of law.

The duty of the state to ensure the special protection of the Curonian Spit as a public interest protected by the Constitution (Paragraph 2 of Article 42 and Paragraph 1 of Article 54 of the Constitution)

See 2.4.2. Social rights, 2.4.2.3. The right to a healthy environment, the ruling of 25 November 2019.

2.4.3.3. The cultural rights of citizens belonging to ethnic communities

The rights of citizens belonging to ethnic communities (Article 37 of the Constitution)

The Constitutional Court's ruling of 21 October 1999

Article 37 of the Constitution prescribes: "Citizens belonging to ethnic communities shall have the right to foster their language, culture, and customs."

This constitutional norm guarantees that the ethnic identity of the ethnic communities residing in the territory of Lithuania will be preserved and that the continuity of their culture and national self-expression will be ensured.

2.5. CITIZENSHIP

The constitutional rights of citizens

The Constitutional Court's ruling of 30 December 2003

Citizenship determines the legal status of a person; the fact that a certain person holds citizenship constitutes the precondition for that person to exercise all the rights and freedoms consolidated in the Constitution and laws, as well as to perform established duties.

In this context, it should be noted that, under the Constitution, only citizens have certain rights: the right to participate in the governance of the state both directly and through democratically elected representatives (Paragraph 1 of Article 33); the right to submit to the Seimas a motion to alter or supplement the Constitution of the Republic of Lithuania (Paragraph 1 of Article 147); the right to vote in elections to the Seimas and the right to stand for election to the Seimas (Paragraph 1 of Article 34, Article 56); the right to vote in presidential elections and the right to stand for election as the President of the Republic (Paragraph 1 of Article 34, Article 56, Paragraphs 1 and 2 of Article 78); the right to be judges (Paragraph 1 of Article 112); the right to enter state service (Paragraph 1 of Article 33); the right to request that a referendum be called (Paragraph 3 of Article 9); the right of legislative initiative (Paragraph 2 of Article 68). The Constitution and laws also establish certain other rights enjoyed only by citizens of the Republic of Lithuania. Under the Constitution, only citizens of the Republic of Lithuania also have certain duties: the duty to defend the State of Lithuania against a foreign armed attack (Paragraph 1 of Article 139 of the Constitution); the duty to perform military or alternative national defence service (Paragraph 2 of Article 139 of the Constitution).

[...]

The permanent legal link between a person and the state, which is expressed by citizenship, implies the duty of the state to protect its citizens within the country, as well as outside its borders: under Paragraph 1 of Article 13 of the Constitution, "The State of Lithuania shall protect its citizens abroad". The state must take care of its citizens abroad in all cases, without taking account of whether or not a citizen of

the Republic of Lithuania violated the laws of a host state. The prohibition has also been established in the Constitution against extraditing a citizen of the Republic of Lithuania to another state – a citizen of the Republic of Lithuania may only be extradited to another state only if an international treaty of the Republic of Lithuania provides so (Paragraph 2 of Article 13 of the Constitution). Such an international treaty may not be in conflict with the Constitution.

On the basis of Paragraph 1 of Article 32 of the Constitution, under which citizens may move and choose their place of residence in Lithuania freely and may leave Lithuania freely, and Paragraph 3 of Article 32 of the Constitution, under which citizens may not be prohibited from returning to Lithuania, the conclusion should be drawn that, under the Constitution, a citizen of the Republic of Lithuania may not be sent from Lithuania.

Article 2 of the Constitution prescribes: “The State of Lithuania shall be created by the Nation. Sovereignty shall belong to the Nation.” Under Article 4 of the Constitution, “The Nation shall execute its supreme sovereign power either directly or through its democratically elected representatives”. Paragraph 1 of Article 33 of the Constitution stipulates that “Citizens shall have the right to participate in the governance of their State both directly and through their democratically elected representatives”; under Paragraph 2 of Article 3 of the Constitution, “The Nation and each citizen shall have the right to resist anyone who encroaches on the independence, territorial integrity, and constitutional order of the State of Lithuania by force”.

It follows from these and other provisions of the Constitution that only the citizens of the Republic of Lithuania, i.e. the national community – the civil Nation, have the right to create the State of Lithuania, i.e. only citizens have the right to decide as to what State of Lithuania there must be, to establish the constitutional order of the State of Lithuania, the organisation of institutions implementing state power, the grounds of relationships between a person and the state, the system of the economy of the country, etc. When implementing the rights and freedoms of citizens, citizens participate in executing the sovereignty of the Nation.

The constitutional foundations of citizenship of the Republic of Lithuania (Article 12 of the Constitution)

The Constitutional Court’s ruling of 30 December 2003

The constitutional foundations of citizenship of the Republic of Lithuania are consolidated in Article 12 of the Constitution; Item 21 of Article 84 of the Constitution provides that the President of the Republic grants citizenship; under Article 85 of the Constitution, the President of the Republic decides questions of granting citizenship by issuing decrees and, to be valid, the decrees of the President of the Republic on granting citizenship must be signed by the Prime Minister or an appropriate minister.

Article 12 of the Constitution prescribes:

“Citizenship of the Republic of Lithuania shall be acquired by birth or on other grounds established by law.

With the exception of individual cases provided for by law, no one may be a citizen of both the Republic of Lithuania and another state at the same time.

The procedure for the acquisition and loss of citizenship shall be established by law.”

Paragraph 1 of Article 12 of the Constitution specifies the main way of the acquisition of citizenship of the Republic of Lithuania: citizenship of the Republic of Lithuania is acquired by birth; the same article also contains the provision that the procedure for the acquisition of citizenship is established by law.

Paragraph 2 of Article 12 of the Constitution consolidates the provision that a citizen of the Republic of Lithuania may not be a citizen of another state at the same time. Thus, the prohibition on dual citizenship is established in the Constitution; however, this prohibition is not absolute: under Paragraph 2 of Article 12 of the Constitution, in individual cases provided for by law, a citizen of the Republic of Lithuania may be a citizen of another state at the same time.

The provision of Paragraph 1 of Article 12 of the Constitution, whereby other grounds for the acquisition of citizenship can also be established by law, and the provision of Paragraph 3 of the same

article, whereby the procedure for the acquisition and loss of citizenship is established by law, mean that the legislature has the duty to pass a law establishing the grounds for acquiring citizenship and regulating the procedure for the acquisition and loss of citizenship of the Republic of Lithuania.

[...]

In the course of establishing the grounds for acquiring citizenship of the Republic of Lithuania and regulating the procedure for the acquisition and loss of citizenship, the legislature has discretion. However, in doing so, the legislature may not deny the nature and meaning of the institution of citizenship, it must pay regard to the constitutional requirement that a citizen of the Republic of Lithuania may be a citizen of another state at the same time only in individual cases established by law. It should be emphasised that the provision of Article 12 of the Constitution, whereby a person may be a citizen of the Republic of Lithuania and, at the same time, a citizen of another state only in individual cases established by law, means that such cases established by law can be very rare (individual), that cases of dual citizenship must be extraordinarily rare and exceptional, that, under the Constitution, it is not permitted to establish any such a legal regulation under which cases of dual citizenship would be not extraordinarily rare exceptions, but rather a widespread phenomenon. Under the Constitution, the expansive interpretation of the provisions of [the law] consolidating the possibility of being a citizen of the Republic of Lithuania and a citizen of another state at the same time, where, according to the said interpretation, dual citizenship would entail not individual, extraordinarily rare exceptions, but rather a widespread phenomenon, is impermissible.

The powers of the President of the Republic to grant citizenship (Item 21 of Article 84 of the Constitution)

The Constitutional Court's ruling of 30 December 2003

Under Item 21 of Article 84 of the Constitution, the President of the Republic grants citizenship of the Republic of Lithuania according to the procedure established by law. This provision means that no other subject may grant citizenship of the Republic of Lithuania, that the President of the Republic, when he/she decides an issue of granting citizenship of the Republic of Lithuania, must follow the requirements established by law, that the President of the Republic is prohibited from granting citizenship of the Republic of Lithuania if he/she does not follow the requirements established by law, as well as the established procedure.

It needs to be noted that, when account is taken of the fact that citizenship of the Republic of Lithuania expresses legal membership of a person in the State of Lithuania and reflects the fact that he/she legally belongs to the national community – the civil Nation, the President of the Republic, when deciding whether to grant citizenship of the Republic of Lithuania to a person, must act in the interests of the Nation and the State of Lithuania.

[...]

... in all cases, granting citizenship of the Republic of Lithuania is an individual act – an act of application of law. A person to whom citizenship of the Republic of Lithuania is granted may acquire citizenship of the Republic of Lithuania only if the respective decree of the President of the Republic on granting citizenship of the Republic of Lithuania (thus, also on granting citizenship of the Republic of Lithuania by way of exception) has been issued without violating the Constitution and laws. If a decree of the President of the Republic on granting citizenship of the Republic of Lithuania is issued in violation of the Constitution and laws, a person may not acquire citizenship of the Republic of Lithuania on the grounds of the said decree of the President of the Republic, since the said decree violates the Constitution and laws.

Granting citizenship by way of exception

The Constitutional Court's ruling of 30 December 2003

... the Constitution ... [does not provide] as to what must be considered merit to the State of Lithuania. Under the valid legal regulation, only the President of the Republic decides on the merit to the State of Lithuania of a citizen of a foreign state or a stateless person.

Under Paragraph 2 of Article 77 of the Constitution, the President of the Republic performs everything with which he/she is charged by the Constitution and laws. Thus, when the President of the Republic decides whether to grant citizenship by way of exception, the President of the Republic is bound by the Constitution and [the law]: citizenship of the Republic of Lithuania may be granted to a citizen of a foreign state or a stateless person only in recognition of his/her merit to the Republic of Lithuania ... and only in accordance with the procedure for granting citizenship, as established in the law (Item 21 of Article 84 of the Constitution).

It needs to be noted that the phrase “to citizens of foreign states or stateless persons with merit to the Republic of Lithuania” ... of [the law] means that a citizen of a foreign state or a stateless person who requests citizenship of the Republic of Lithuania granted by way of exception must be of merit not to any entity, but to the State of Lithuania itself.

... in principle, a person must be of merit to the national community of Lithuania – the civil Nation – which, under the Constitution, has the sovereign powers and is the creator of the State of Lithuania, since the said citizen of a foreign state or stateless person aspires to become a member of this national community.

... financial, material, or any other support by a citizen of a foreign state or a stateless person rendered to a certain citizen or a group of citizens of the Republic of Lithuania, a state official, a certain enterprise, establishment, or organisation may be considered only support of the said citizen of a foreign state or stateless person for the said citizen or the group of citizens of the Republic of Lithuania, the said state official, the said enterprise, establishment, or organisation, but this support should not be considered merit to ... the Republic of Lithuania.

It also needs to be noted that ... in general, the fact whether a citizen of a foreign state or a stateless person is of merit to the State of Lithuania may not be evaluated by the mere amount of money or the amount of material and other support rendered by a citizen of a foreign state or a stateless person to a certain citizen or a group of citizens of the Republic of Lithuania, a state official, a certain enterprise, establishment, or organisation, or even to the State of Lithuania itself. It follows [neither] from the Constitution ... [nor] other laws that citizenship of the Republic of Lithuania may be acquired for financial, material, or any other support, i.e. that citizenship may be bought. In the context of the emergence of citizenship relationships, merit to the state may not be evaluated only on the basis of money transferred (donated) to a certain subject or other support. ... only such activity of a person should be considered merit to the Republic of Lithuania where he/she very significantly contributes to strengthening Lithuania’s statehood or to increasing the power of Lithuania and its authority in the international community and where it is evident that such a person has already been integrated into Lithuanian society. Only in such cases, the preconditions may arise for considering and deciding on whether a citizen of a foreign state or a stateless person is of merit to the Republic of Lithuania, as required by [the law].

The Constitutional Court notes that laws or other legal acts may not establish a final list of merit in recognition of which a citizen of a foreign state or a stateless person can be granted citizenship of the Republic of Lithuania by way of exception: as mentioned before, only the President of the Republic decides whether a citizen of a foreign state or a stateless person is of merit to the State of Lithuania. However, when deciding this, the President of the Republic may not disregard the requirement established in [the law] that a citizen of a foreign state or a stateless person must be of merit not to any entity, but to the State of Lithuania itself. The merit of a person who requests citizenship of the Republic of Lithuania granted by way of exception must be such and reasoned in such a manner that it would not cause any doubts as to the presence of such merit.

[...]

One of the conditions for granting citizenship of the Republic of Lithuania is requirement for permanent residence in Lithuania for the last ten years. Although [the law] provides that, in the course of granting citizenship of the Republic of Lithuania by way of exception, the conditions provided for in [the law] are not applied (one of such conditions, as mentioned before, is the requirement that a person must reside in Lithuania for the last ten years), however, [this provision] cannot be interpreted as permitting granting, by way of exception, citizenship of the Republic of Lithuania to such a citizen of a foreign state

or a stateless person who is of merit to the Republic of Lithuania but is not linked with the State of Lithuania by permanent factual links and is not integrated into Lithuanian society. A different interpretation ... would deny the nature and essence of citizenship of the Republic of Lithuania itself: the permanent legal link between a citizen of a foreign state or a stateless person and the State of Lithuania can arise only on the basis of the permanent factual link between a citizen of a foreign state or a stateless person and the State of Lithuania, where such a link has existed for the period established under the law and exists at a given moment. Citizens of foreign states or stateless persons who are of merit to the Republic of Lithuania, but who are not linked with the State of Lithuania by permanent factual links and are not integrated into Lithuanian society, may be conferred awards of the State of Lithuania (orders, medals, and other decorations). ... citizenship of the Republic of Lithuania is not and may not be a state award. Therefore, if a citizen of a foreign state or a stateless person with merit to the Republic of Lithuania is not linked with the State of Lithuania by permanent factual links and is not integrated into Lithuanian society, there is no special – permanent and legal – link between such a person and the State of Lithuania, which is expressed by citizenship.

[...]

The legal regulation established in [the law] means that, before the President of the Republic issues a decree on granting citizenship, it is necessary to verify and ascertain in all cases, including cases where citizenship of the Republic of Lithuania is granted by way of exception to citizens of a foreign state or stateless persons with merit to the Republic of Lithuania, whether there are any circumstances ... due to which citizenship of the Republic of Lithuania may not be granted to persons. To state the fact that there are not any such circumstances is a duty arising out of [the law]; the said duty falls on the institutions preparing documents for granting citizenship. However, as mentioned before, although the said duty falls on the institutions preparing documents for granting citizenship, this does not mean that the President of the Republic does not have the duty to demand the confirmation from the institutions (their officials) preparing documents for granting citizenship that there are not any such circumstances due to which citizenship of the Republic of Lithuania may not be granted: the President of the Republic must ascertain this prior to the issuing of a decree on granting citizenship of the Republic of Lithuania, including that on granting citizenship to a citizen of a foreign state or a stateless person with merit to the Republic of Lithuania.

It also needs to be noted that, in the course of granting citizenship of the Republic of Lithuania by way of exception, it is not enough to assess whether a person is of merit to the Republic of Lithuania and whether there are any circumstances ... due to which citizenship of the Republic of Lithuania may not be granted to such a person. Granting citizenship means the statement that there is a permanent legal link between the respective person and the state and that such a person has become a member of the national community – the civil Nation. The state, as the organisation of all society, may not be indifferent about persons who become its citizens. Therefore, even in cases where a citizen of a foreign state or a stateless person is of merit to the Republic of Lithuania, is linked with the State of Lithuania by permanent factual links, and is integrated into Lithuanian society, in the course of deciding on whether to grant citizenship of the Republic of Lithuania to such a person by way of exception, it is necessary to assess all circumstances characterising such a person and to act in the interests of the Nation and the State of Lithuania.

The concept of citizenship

The Constitutional Court's ruling of 13 November 2006

When interpreting the constitutional institution of citizenship of the Republic of Lithuania, the Constitutional Court has held that: citizenship is a permanent, uninterrupted legal link between a person and the state; citizenship arises when a person becomes a citizen and continues until the death of the person or until his/her loss of citizenship; the legal link of a citizen with the state persists no matter where he/she might be: whether in the state a citizen of which he/she is, or outside its borders, i.e. in another state; after a citizen has departed for another state, his/her legal link with the state a citizen of which he/she is persists;

it is the permanent (uninterrupted) legal link between a citizen and the state that enables distinguishing this special legal link from the legal link that arises between the state and a foreigner or a stateless person who resides in it permanently or temporarily: when a foreigner or a stateless person leaves the state, his/her legal link with the state discontinues. When a citizen leaves for another state, his/her legal link with the state whose citizen he/she is persists (ruling of 30 December 2003).

Citizenship of the Republic of Lithuania expresses the legal membership of a person in the State of Lithuania and reflects the fact that a person legally belongs to the civil Nation – the national community. The link between citizens and the state is mutual: citizenship grants a person and guarantees him/her civil (political) rights and establishes his/her certain duties to the state; certain duties arise from citizenship relationships for the state to its citizens. Citizenship, as a particular legal link with the State of Lithuania, allows citizens to be guaranteed all rights and freedoms that are enjoyed only by citizens of the Republic of Lithuania, as well as enables citizens to have the protection of the state both in Lithuania and abroad.

The constitutional ground for establishing easier conditions for acquiring citizenship of the Republic of Lithuania with respect to Lithuanians residing abroad (Paragraph 4 of Article 32 of the Constitution)

The Constitutional Court's ruling of 13 November 2006

... the provision of Paragraph 4 of Article 32 of the Constitution, whereby everyone who is Lithuanian may settle in Lithuania, means that all Lithuanians who reside abroad, wherever their permanent residence, have the right to come back to Lithuania, their ethnical homeland, at any time. Under the Constitution, it is not allowed to establish any such a legal regulation that would cut off Lithuanians living abroad from the Lithuanian nation. Lithuanians who reside abroad may not be deprived of the possibility of participating in the life of the Lithuanian nation if they so request. Lithuanians residing abroad are an inseparable part of the Lithuanian nation.

This is the constitutional ground for establishing, by means of a law, such a legal regulation whereby Lithuanians residing abroad would have the right to become citizens of the Republic of Lithuania under different (easier) conditions compared with those established for other persons who seek citizenship of the Republic of Lithuania (*inter alia*, where the usual naturalisation conditions would not be applied to Lithuanians who reside abroad and seek citizenship of the Republic of Lithuania). This is also the constitutional ground for consolidating, in laws, the institution of retaining citizenship of the Republic of Lithuania, applicable to Lithuanians residing abroad who seek citizenship of the Republic of Lithuania, particularly, if they, their parents, grandparents, or great-grandparents were linked with Lithuania by citizenship relationships.

The relation between citizenship of the Republic of Lithuania and citizenship of the European Union

The Constitutional Court's ruling of 13 November 2006

After the Republic of Lithuania became a Member State of the European Union on 1 May 2004, citizens of the Republic of Lithuania became citizens of the European Union.

[...]

... citizenship of the European Union does not change the content of the national institution of citizenship of any Member State; thus, it does not change the content of the institution of citizenship of the Republic of Lithuania, either. With respect to citizenship of the Republic of Lithuania, citizenship of the European Union is complementary, additional, as only a person who holds citizenship of a Member State of the European Union, in this case, the Republic of Lithuania, may be a citizen of the European Union. The limitation on dual citizenship consolidated in the Constitution is not applicable to citizenship of the European Union, a Member State of which the Republic of Lithuania is.

The continuity of citizenship

The Constitutional Court's ruling of 22 February 2013

... the continuity of the State of Lithuania gives rise to the continuity of citizenship of the Republic of Lithuania, which, *inter alia*, implies that, from the viewpoint of international law and Lithuanian constitutional law, the imposition of USSR citizenship upon the citizens of the Republic of Lithuania in 1940, as a consequence of the aggression of the USSR, was an act that was null and void; thus, this act was not a legal ground to lose citizenship of the Republic of Lithuania. Consequently, during the years of the Soviet occupation, the citizens of the Republic of Lithuania (persons who held citizenship of the Republic of Lithuania on 15 June 1940 and their descendants) were also not bound by the unlawfully imposed obligations related to USSR citizenship, *inter alia*, the general military obligation of the USSR, which was introduced in the occupied territory of the Republic of Lithuania.

As the Constitutional Court held in its ruling of 13 November 2006, “‘Citizenship of the USSR’ and ‘citizenship of the Lithuanian SSR’, which were imposed by force, were and are null and void”; “even though the citizens of the Republic of Lithuania temporarily used the passports of citizens of the USSR ... they could not be treated as citizens of the USSR, i.e. as citizens of the state that declared them as its citizens against their own will”.

It also needs to be noted that the imposition of citizenship of an occupying state upon the population of the occupied territory and the forced conscription of this population into the military service of the occupying state is forbidden under the universally recognised international legal norms. ...

... the compulsory “actual military service” established by the USSR legal acts and imposed upon the citizens of the Republic of Lithuania (persons who held citizenship of the Republic of Lithuania on 15 June 1940 and their descendants) subsequent to call-up is reasonably considered forced military service to a foreign state, and all citizens of the Republic of Lithuania (persons who held citizenship of the Republic of Lithuania on 15 June 1940 and their descendants) were forced to such service during the period of the occupation of the territory of the Republic of Lithuania (from 15 June 1940 until the restoration of the independence of the Republic of Lithuania on 11 March 1990) unlawfully. In this context, it needs to be noted that, according to the norms of international law ... compelling the residents of the occupied territory to serve in the armed forces of an occupying (hostile) state is considered a war crime.

There is no ground to assess the forced military service of the citizens of the Republic of Lithuania in the USSR armed forces when such service was performed after the restoration of the independence of the Republic of Lithuania on 11 March 1990 in a different manner. ...

In this context, it needs to be noted that, as mentioned before, during the years of the Soviet occupation, the citizens of the Republic of Lithuania (persons who held citizenship of the Republic of Lithuania on 15 June 1940 and their descendants) were also not bound by the unlawfully imposed obligations related to USSR citizenship, *inter alia*, the general military obligation of the USSR, which was introduced in the occupied territory of the Republic of Lithuania. Thus, forcing the citizens of the Republic of Lithuania to serve to a foreign state after the restoration of the independence of the Republic of Lithuania on 11 March 1990 all the more so could not be lawful. It also needs to be noted that, as mentioned before, from the provision of the Act of the Supreme Council of the Republic of Lithuania on the Re-establishment of the Independent State of Lithuania of 11 March 1990 that the constitution of no other state is valid on the territory of the Republic of Lithuania, it is obvious that the introduction of the validity of the constitution of any other state (*inter alia*, the USSR), *inter alia*, the imposition of the duties established by such a constitution on the citizens of the Republic of Lithuania, was unlawful.

Dual citizenship (Paragraph 2 of Article 12 of the Constitution)*The Constitutional Court's decision of 13 March 2013*

Paragraph 2 of Article 12 of the Constitution prescribes: “With the exception of individual cases provided for by law, no one may be a citizen of both the Republic of Lithuania and another state at the same time.”

This provision of the Constitution consolidates the general prohibition on holding both citizenship of the Republic of Lithuania and citizenship of another state simultaneously: “no one may be a citizen of both

the Republic of Lithuania and another state at the same time”. However, as the Constitutional Court noted in its ruling of 13 November 2006, this prohibition of dual citizenship consolidated in the Constitution is not absolute: under Paragraph 2 of Article 12 of the Constitution, the law may and must provide for individual cases when a person may be a citizen of both the Republic of Lithuania and another state at the same time.

It needs to be noted that the phrase “with the exception of individual cases provided for by law” means that the law regulating citizenship relationships may establish only exceptional cases when a person may be a citizen of both the Republic of Lithuania and another state at the same time, i.e. the legal regulation must be such that the cases of dual (multiple) citizenship would be an exception to the prohibition of such citizenship, expressed by the formula “no one may”, but not a rule denying this prohibition.

Thus ... under the Constitution, the legislature cannot follow the provision that it is not necessary to limit cases of dual (multiple) citizenship.

[...]

... such a legal regulation under which citizens of the Republic of Lithuania who departed from the Republic of Lithuania to reside in other states after the restoration of the independence of the Republic of Lithuania on 11 March 1990 and acquired citizenship of those states could be citizens of the Republic of Lithuania and of another state at the same time would ... create the preconditions for dual (multiple) citizenship to be not an individual and extraordinarily rare exception, but rather a widespread phenomenon; thus, the said legal regulation would be incompatible with Paragraph 2 of Article 12 of the Constitution.

[...]

In its ruling of 13 November 2006, the Constitutional Court emphasised that, if the legislature really followed the provision that the limitation on dual citizenship is unnecessary, it would, first of all, start the revision of the relevant provisions of the Constitution, *inter alia*, Article 12 thereof, and would do that by following the procedure that is established in the Constitution itself. In this context, the Constitutional Court noted that Article 12 of the Constitution, which consolidates the basis for the legal regulation of citizenship relationships in the Republic of Lithuania, is contained in Chapter I “The State of Lithuania” of the Constitution – an integral act; particularly considerable constitutional protection is established for the provisions of the said chapter: under Paragraph 2 of Article 148 of the Constitution, the provisions of Chapter I of the Constitution may be altered only by referendum.

Thus, without making any amendments to the Constitution, *inter alia*, without having altered Paragraph 2 of Article 12 of the Constitution by referendum, it is not allowed to establish, by means of a law, any such a legal regulation ... whereby the citizens of the Republic of Lithuania who departed from the Republic of Lithuania to reside in other states after the restoration of the independence of the Republic of Lithuania on 11 March 1990 and acquired citizenship of those states could be citizens of the Republic of Lithuania and of another state at the same time.

Acquiring citizenship through naturalisation (according to the general procedure) (Article 12 and Item 21 of Article 84 of the Constitution)

The Constitutional Court’s decision of 13 March 2013

The discretion of the legislature (which stems from Article 12 of the Constitution) to establish the grounds for acquiring citizenship of the Republic of Lithuania and to regulate the procedure of the acquisition and loss of citizenship is bound, *inter alia*, by Item 21 of Article 84 of the Constitution, under which the President of the Republic grants citizenship of the Republic of Lithuania according to the procedure established by law. The provision of Item 21 of Article 84 of the Constitution means that no other subject may grant citizenship of the Republic of Lithuania, that the President of the Republic, when he/she decides an issue of granting citizenship of the Republic of Lithuania, must follow the requirements established by law, and that the President of the Republic is prohibited from granting citizenship of the Republic of Lithuania if he/she does not follow the requirements established by law, as well as the established procedure (ruling of 30 December 2003).

It needs to be noted that the provision of Item 21 of Article 84 of the Constitution implies the duty of the legislature to establish the general ground – naturalisation – for granting citizenship to citizens of foreign states and stateless persons. In its rulings of 30 December 2003 and 13 November 2006, the Constitutional Court noted that it is also possible to acquire citizenship by way of naturalisation, i.e. citizenship is granted to a person who meets the conditions established under the law; as a rule, such conditions are the requirements for permanent residence in the state for a certain time period established under the law and the knowledge of the state language; these requirements are based on the provision that a person wishing to acquire citizenship and the state must be linked by a permanent factual link before citizenship is granted, that permanent residence in the state during a certain time period established under the law and the knowledge of the state language are necessary preconditions for a foreigner or a stateless person to integrate himself/herself into society, to perceive the mentality of the Nation and its strivings, the constitutional order of the state, to become acquainted with the history, culture, customs, and traditions of the Nation and the state, and to be prepared to take responsibility for the present and future of the state. Thus, under the Constitution, the necessary conditions for granting citizenship of the Republic of Lithuania by way of naturalisation are a permanent factual link of a person with the State of Lithuania and integration into Lithuanian society, the necessary preconditions whereof are permanent residence in the state during a certain time period established under the law, the knowledge of the state language, as well as other significant circumstances provided for under the law, which indicate, *inter alia*, that a person perceives the strivings of the Nation and the constitutional order of the state, is acquainted with the history and culture of the Nation, and is prepared, as a member of society, to participate when the affairs of the Nation and the state are decided.

It also needs to be noted that, when regulating the acquisition of citizenship by way of naturalisation, it is necessary to pay regard to the general prohibition on holding citizenship of both the Republic of Lithuania and another state simultaneously, which is consolidated in Paragraph 2 of Article 12 of the Constitution, i.e. granting citizenship to citizens of foreign state under the general procedure must be linked to the loss or renunciation of citizenship of another state; the loss, renunciation, or non-holding of citizenship of another state must be one of the essential conditions necessary for granting citizenship of the Republic of Lithuania by way of naturalisation.

It also needs to be noted that, when account is taken of the fact that citizenship of the Republic of Lithuania expresses the legal membership of a person in the State of Lithuania and reflects the fact that he/she belongs to the national community – the civil Nation, the President of the Republic, when he/she decides whether to grant citizenship of the Republic of Lithuania to a person, must act in the interests of the Nation and the State of Lithuania (rulings of 30 December 2003 and 13 November 2006). Thus, the provision of Item 21 of Article 84 of the Constitution implies the right, but not the duty, of the President of the Republic to grant citizenship by way of naturalisation to citizens of foreign states or stateless persons who meet the conditions of naturalisation prescribed under the law; in cases where granting citizenship of the Republic of Lithuania is not in the interests of the Nation and the State of Lithuania, even such persons who meet the said conditions may not necessarily be granted citizenship of the Republic of Lithuania. Thus, when the President of the Republic decides whether to grant citizenship of the Republic of Lithuania by way of naturalisation, all circumstances describing a person who requests citizenship must be assessed, i.e. not exclusively the circumstances due to which, under the law, granting citizenship is prohibited. Thus, the President of the Republic has not only the duty to require, from the respective state institutions and officials, the confirmation that there are not any such circumstances due to which citizenship of the Republic of Lithuania may not be granted, but also the right to receive any information they have that describes a person that requests citizenship, which may be significant when assessing whether granting citizenship is in the interests of the Nation and the State of Lithuania.

Granting citizenship by way of exception in recognition of merit to the State of Lithuania

The Constitutional Court's decision of 13 March 2013

... such a way of the acquisition of citizenship of the Republic of Lithuania as granting citizenship by way of exception in recognition of merit to the State of Lithuania is not explicitly provided for in the Constitution; in the course of establishing the grounds for acquiring citizenship of the Republic of Lithuania and regulating the procedure for the acquisition and loss of citizenship, the legislature has discretion. The provision of Item 21 of Article 84 of the Constitution which, as mentioned before, implies the duty of the legislature to provide for the general procedure of granting citizenship – by way of naturalisation – to citizens of foreign states and stateless persons does not mean the requirement that the legislature must also establish a certain different procedure for granting citizenship. Thus, the establishment of the procedure for granting citizenship by way of exception in recognition of merit to the State of Lithuania is the discretion of the legislature; such a procedure for granting citizenship is a matter of a law that regulates citizenship relationships. When exercising this discretion, the legislature must pay regard to the Constitution ... the legislature may not deny the nature and meaning of the institution of citizenship; among other things, the legislature must pay regard to the constitutional requirement that a citizen of the Republic of Lithuania may also be a citizen of another state at the same time only in individual cases established by means of a law.

As the Constitutional Court noted in its ruling of 13 November 2006, granting citizenship of the Republic of Lithuania by way of exception is an exceptional, special, and extraordinary case. In this context, it needs to be noted that granting citizenship of the Republic of Lithuania to citizens of foreign states or stateless persons by way of exception implies exceptions to the general procedure of granting citizenship – by way of naturalisation – to citizens of foreign states and stateless persons. This may, first of all, be an exception to the general prohibition on holding both citizenship of the Republic of Lithuania and citizenship of another state simultaneously, which is consolidated in Paragraph 2 of Article 12 of the Constitution.

It has been mentioned that the legislature must pay regard to the constitutional requirement that a citizen of the Republic of Lithuania may also be a citizen of another state at the same time only in individual cases established by law; in its rulings of 30 December 2003 and 13 November 2006, the Constitutional Court emphasised that the provision of Article 12 of the Constitution, whereby, with the exception of individual cases provided for by law, no one may be a citizen of both the Republic of Lithuania and another state at the same time, means that such cases established by law can be very rare (individual), that cases of dual citizenship must be extraordinarily rare and exceptional, that, under the Constitution, it is not permitted to establish any such a legal regulation under which cases of dual citizenship would be not extraordinarily rare exceptions, but rather a widespread phenomenon.

Thus, such a legal regulation of granting citizenship to citizens of foreign states and stateless persons by way of exception, under which citizenship of the Republic of Lithuania would be granted under this procedure only on such an exceptional ground that would constitutionally justify the exception to the general prohibition on holding both citizenship of the Republic of Lithuania and citizenship of another state, would comply with the Constitution. As it is obvious from the Constitutional Court's ruling of 13 November 2006, such an exceptional ground for granting citizenship to a citizen of a foreign state or a stateless person by way of exception is only special merit to the State of Lithuania: in the same ruling, the Constitutional Court noted that the phrase "by way of exception" means that such merit of a citizen of a foreign state to Lithuania must be exceptional, special, and extraordinary ...

When revealing the concept (compatible with the Constitution) of merit to the State of Lithuania for which citizenship of the Republic of Lithuania may be granted to citizens of foreign states or stateless persons, in its rulings of 30 December 2003 and 13 November 2006, the Constitutional Court held that:

... only such activity of a person should be considered merit to the Republic of Lithuania where a person very significantly contributes to strengthening Lithuanian statehood and to increasing the power of Lithuania and its authority in the international community; only in such cases the preconditions may arise for considering and deciding on whether a citizen of a foreign state or a stateless person is of merit to the Republic of Lithuania; the merit of a citizen of a foreign state for Lithuania must be exceptional, special, and extraordinary;

– laws or other legal acts may not establish a final list of merit for which a citizen of a foreign state or a stateless person can be granted citizenship of the Republic of Lithuania by way of exception;

– only the President of the Republic decides on the merit to the State of Lithuania of a citizen of a foreign state or a stateless person; when deciding on this issue, the President of the Republic may not disregard the requirement, established in [the law], that a citizen of a foreign state or a stateless person must be of merit not to any entity, but to the State of Lithuania itself;

– the merit of a person who requests citizenship of the Republic of Lithuania by way of exception must be such and reasoned in such a manner that it would not cause any doubts as to the presence of such merit;

– when deciding whether a citizen of a foreign state or a stateless person is of merit to the Republic of Lithuania, it is necessary to assess only such very significant activity for the State of Lithuania itself that was performed when a person in question was a citizen of a foreign state or a stateless person.

In this context, it needs to be noted that, when revealing the content of the constitutional institution of state awards, the Constitutional Court interpreted the concept of merit to the State of Lithuania in a similar way in its rulings of 12 May 2006 and 7 September 2010. In the said rulings of the Constitutional Court, *inter alia*, the following was held: persons who performed exceptional deeds demanding extraordinary efforts or even self-sacrifice where the said deeds provided exceptional benefits to the State of Lithuania, its society, or certain spheres of life of this country, in recognition of their merit to the State of Lithuania, are honoured in the name of the state by means of state awards.

When summarising the concept of merit to the State of Lithuania for which citizenship of the Republic of Lithuania may be granted to citizens of foreign states or stateless persons by way of exception, it needs to be noted that:

– this must be special and undoubted merit to the State of Lithuania itself;

– the activity of a person must be regarded as special merit to the Republic of Lithuania when such a person very significantly contributes to strengthening Lithuanian statehood and to increasing the power of Lithuania and its authority in the international community, i.e. exceptional deeds demanding extraordinary efforts or even self-sacrifice where the said deeds provided exceptional benefits to the State of Lithuania, its society, or certain spheres of the life of this country;

– such merit to the State of Lithuania is a particularly significant activity that was performed by a person who requests citizenship of the Republic of Lithuania by way of exception when this person was a citizen of a foreign state or a stateless person, i.e. any likely future activity of a person, even though significant to the State of Lithuania, after citizenship of the Republic of Lithuania is granted, may not be considered such merit;

– when considering the request to grant citizenship of the Republic of Lithuania by way of exception and assessing all significant circumstances, the President of the Republic decides in each case whether a certain person is of special and undoubted merit to the State of Lithuania.

[...]

... in addition to the aforementioned exception to the general prohibition on holding both citizenship of the Republic of Lithuania and citizenship of another state, while regulating granting citizenship to citizens of foreign states or stateless persons by way of exception, it is possible to establish exceptions to other conditions of naturalisation – different criteria applicable when establishing a permanent factual link with the State of Lithuania and integration into Lithuanian society.

However, as mentioned before, the legislature may not deny the nature and meaning of the institution of citizenship, *inter alia*, the fact that citizenship is a permanent, uninterrupted legal link between a person and the state, that citizenship of the Republic of Lithuania expresses the legal membership of a person in the State of Lithuania, and reflects the fact that a person legally belongs to the civil Nation – the national community. In its ruling of 13 November 2006, the Constitutional Court emphasised the constitutional imperative that a citizen of a foreign state to whom citizenship of the Republic of Lithuania is granted in recognition of his/her merit to Lithuania and who becomes a member of the Lithuanian national community – civil society must be linked with the State of Lithuania by permanent factual links and must be integrated into Lithuanian society. A different interpretation would deny the nature and essence of

citizenship of the Republic of Lithuania itself: the legal link between a citizen of a foreign state or a stateless person and the State of Lithuania can arise only on the basis of the permanent factual link between a citizen of a foreign state or stateless person and the State of Lithuania, where such a link existed for the period established under the law and exists at a given moment (ruling of 30 December 2003). In its ruling of 30 December 2003, the Constitutional Court noted that citizens of foreign states or stateless persons who are of merit to the Republic of Lithuania but are not linked with the State of Lithuania by permanent factual links and are not integrated into Lithuanian society may be conferred awards of the State of Lithuania (orders, medals, and other decorations); if a citizen of a foreign state or a stateless person with merit to the Republic of Lithuania is not linked with the State of Lithuania by permanent factual links and is not integrated into Lithuanian society, there is no special – permanent and legal – link between such a person and the State of Lithuania, which is expressed by citizenship.

In the Constitutional Court's ruling of 13 November 2006, it was held that the preconditions for violation of Paragraph 2 of Article 12 of the Constitution may arise not only when such a legal regulation is established whereby dual citizenship becomes not an especially rare exception, but rather a widespread phenomenon, but also when citizenship of the Republic of Lithuania is granted (also by way of exception) to persons who hold citizenship of another state, are not linked by a permanent factual link with the State of Lithuania, and are not integrated into Lithuanian society; in both cases, citizenship of the Republic of Lithuania may be devaluated.

[...]

While summarising the conditions of granting citizenship by way of exception in recognition of merit to the State of Lithuania linked to the establishment of a permanent factual link with the State of Lithuania and integration into Lithuanian society of a person who requests citizenship, it needs to be noted that:

- when regulating the granting of citizenship by way of exception in recognition of merit to the State of Lithuania, the legislature must pay regard to the constitutional imperative that a person who is granted citizenship of the Republic of Lithuania in recognition of merit to the State of Lithuania must be linked with the State of Lithuania by permanent factual links and must be integrated into Lithuanian society; however, a law may establish requirements (related to the permanent factual link of a person who requests citizenship with the State of Lithuania and his/her integration into Lithuanian society) that are not identical to the respective conditions of naturalisation;

- a law may establish requirements different from those of naturalisation, where such requirements are related, *inter alia*, to the permanent residence of a person in the state and the knowledge of the state language, as well as criteria different from those of permanent residence in the state, confirming the permanent factual link of a person with the State of Lithuania that has formed during a certain time and is still continuing, as well as his/her integration into Lithuanian society, *inter alia*, the fact that the activity of a person shows that he/she perceives the strivings of the Nation, the constitutional order of the state, is acquainted with the history and culture of the Nation and the state, and is prepared, as a member of society, to participate when the affairs of the Nation and the state are decided;

- a law may also establish such a procedure for establishing a permanent factual link of a person with the State of Lithuania and integration into Lithuanian society that would be different from that of naturalisation; when considering the request to grant citizenship of the Republic of Lithuania by way of exception and assessing all significant circumstances, the President of the Republic decides in each case whether a certain person is linked with the State of Lithuania by a permanent factual link and is integrated into Lithuanian society.

[...]

... the provision of Item 21 of Article 84 of the Constitution, as in the case of naturalisation, implies the right, but not the duty, of the President of the Republic to grant citizenship to citizens of foreign states or stateless persons by way of exception prescribed by the law. As the Constitutional Court noted in its ruling of 30 December 2003, the President of the Republic has the right, but not the duty, to grant citizenship by way of exception to citizens of foreign states or stateless persons who are of special merit to the Republic of Lithuania; however, even though a citizen of a foreign state or a stateless person is of merit

to the Republic of Lithuania, citizenship of the Republic of Lithuania may not necessarily be granted to him/her by way of exception; this is decided by the President of the Republic at his/her discretion.

In this context, it needs to be noted that, in the Constitutional Court's ruling of 13 November 2006, it was held that, even in those cases where a citizen of a foreign state or a stateless person is of merit to the Republic of Lithuania, is linked with the State of Lithuania by permanent factual links, and is integrated into Lithuanian society, when deciding whether to grant citizenship of the Republic of Lithuania to such a person by way of exception, it is necessary to assess all circumstances characterising such a person and to act in the interests of the Nation and the State of Lithuania. Thus, as in the case of naturalisation, citizenship of the Republic of Lithuania may not necessarily be granted even to persons who meet the conditions of granting citizenship by way of exception in recognition of their merit to the State of Lithuania prescribed under the law, if granting citizenship does not serve the interests of the Nation and the State of Lithuania. Thus, when the President of the Republic decides whether to grant citizenship of the Republic of Lithuania by way of exception in recognition of merit to the State of Lithuania, all circumstances describing a person who requests citizenship must be assessed, i.e. not exclusively the circumstances due to which, under the law, granting citizenship is prohibited. The President of the Republic has not only the duty to require, from the respective state institutions and officials, the confirmation that there are not any such circumstances due to which citizenship of the Republic of Lithuania may not be granted, but also the right to receive any information they have that describes a person that requests citizenship, which may be significant when assessing whether granting citizenship is in the interests of the Nation and the State of Lithuania.

It also needs to be noted that, as the Constitutional Court held in its ruling of 30 December 2003, the circumstance that only the President of the Republic has the right to decide whether a citizen of a foreign state or a stateless person can be granted citizenship of the Republic of Lithuania by way of exception may not be interpreted as meaning that the President of the Republic, when deciding whether to grant citizenship of the Republic of Lithuania to a citizen of a foreign state or stateless person who is of merit to the Republic of Lithuania, may disregard the requirements established in the Constitution and [the law]. Thus, the discretion of the President of the Republic to decide regarding granting citizenship by way of exception in recognition of merit to the State of Lithuania is bound by the requirements that stem from the Constitution and are established under the law, *inter alia*, by the constitutional imperatives that a person must have special and undoubted merit to the State of Lithuania itself and that a person who has such merit must be linked with the State of Lithuania by permanent factual links and must be integrated into Lithuanian society.

The continuity of citizenship

The Constitutional Court's ruling of 18 March 2014

In its ruling of 22 February 2013, the Constitutional Court also noted that the continuity of the State of Lithuania gives rise to the continuity of citizenship of the Republic of Lithuania, which, *inter alia*, implies that, from the viewpoint of international law and Lithuanian constitutional law, the imposition of USSR citizenship upon the citizens of the Republic of Lithuania in 1940, as a consequence of the aggression of the USSR, was an act that was null and void; thus, this act was not a legal ground to lose citizenship of the Republic of Lithuania; consequently, during the years of the Soviet occupation, the citizens of the Republic of Lithuania (persons who held citizenship of the Republic of Lithuania on 15 June 1940 and their descendants) were also not bound by the unlawfully imposed obligations related to USSR citizenship. In addition, the Constitutional Court recalled that the imposition of citizenship of an occupying state upon the population of the occupied territory and the forced conscription of this population into the military service of the occupying state is forbidden under the universally recognised international legal norms ...

Thus, in this context, it should also be noted that, according to the universally recognised international legal norms, the citizens of the Republic of Lithuania had an inalienable right to resist the aggression of another state, *inter alia*, the Soviet occupation; the organised armed fight of the citizens of the Republic of Lithuania in 1944–1953 against the Soviet occupation should be assessed as the self-defence of the State of Lithuania.

Consequently, in view of the fact that the aggression of the USSR was carried out against the Republic of Lithuania, also in view of the continuity of the State of Lithuania and the continuity of citizenship of the Republic of Lithuania, the organised armed partisan forces should be regarded as the armed forces of the Republic of Lithuania that resisted the occupation, i.e. as volunteer forces of a party to an international armed conflict, whose members have the status of a combatant. ...

In this context, it should also be noted that, in its ruling of 22 February 2013, the Constitutional Court held that service to the State of Lithuania was possible only in the structures (*inter alia*, in the Lithuanian Freedom Fight Movement) of the organised armed resistance against the occupation, which took place for a certain time in the occupied territory of the Republic of Lithuania.

The principle of the continuity of citizenship of the Republic of Lithuania

The Constitutional Court's decision of 5 September 2019

In its rulings of 22 February 2013 and 18 March 2014, the Constitutional Court emphasised that it is obvious from the provisions “the execution of the sovereign powers of the State of Lithuania abolished by foreign forces in 1940 is re-established, and henceforth Lithuania is again an independent state” of the Act of 11 March 1990 that the restoration of the Independence of the Republic of Lithuania was based on the continuity of the State of Lithuania (which means that the aggression started by the USSR against the Republic of Lithuania on 15 June 1940 (*inter alia*, the occupation and annexation of the territory of the Republic of Lithuania) did not end the existence of the State of Lithuania as a subject of international law or its sovereign powers) and that the continuity of the State of Lithuania gives rise to the continuity of citizenship of the Republic of Lithuania, which, *inter alia*, implies that, from the viewpoint of international law and Lithuanian constitutional law, imposing citizenship of the USSR on the citizens of the Republic of Lithuania in 1940, as a consequence of the aggression of the USSR, was an act that was null and void; thus, this act was not a legal ground to lose citizenship of the Republic of Lithuania; thus, during the years of the Soviet occupation, the citizens of the Republic of Lithuania (persons who held citizenship of the Republic of Lithuania on 15 June 1940 and their descendants) were also not bound by the unlawfully imposed obligations related to citizenship of the USSR.

Therefore, in these rulings, the Constitutional Court emphasised, among others, the importance of the fact of holding citizenship of the Republic of Lithuania on 15 June 1940 in applying the principle of the continuity of citizenship of the Republic of Lithuania.

3. LEGAL RESPONSIBILITY

On the constitutional responsibility, see 4. The state and its institutions, 4.4. The responsibility of the authorities to society. The constitutional responsibility of the highest-ranking state officials.

3.1. GENERAL PROVISIONS

A criminal conduct simulation model

The Constitutional Court's ruling of 8 May 2000

... the obligation of the state and its institutions is prevention of crime. A criminal conduct simulation model may only serve as one of the measures in the detection of a crime prepared by a person or in the detection of a crime at an early stage of its commission. State institutions may not establish any such a legal regulation that would permit state special services to incite or provoke a person to commit a crime so that after it there would emerge the grounds for prosecuting the said person.

[...]

It needs to be noted that by means of the model it is only permitted to “join” to long-lasting or continuing crimes, or to crimes that are in progress, but are not finished. Such criminal acts continue without the efforts of undercover agents taking part in operational activities. The undercover agents only imitate the actions of the preparation of a crime or those of a crime that is in progress. It is not permitted, by means of the model, to incite or provoke the commission of a new crime or to incite the commission of a criminal act that was only prepared by an individual, but later the said individual stopped such an act. ... The disregard of the limits of the application of the model established in [the law], provoking the commission of a crime or any other abuse by means of the model makes the use of the model unlawful. The investigation and assessment of such circumstances are a matter of judicial consideration.

[...]

Performing the actions exhibiting elements of a crime, undercover agents may not use physical or psychological coercion against persons suspected of having committed a crime, may not put them under any active pressure, or incite or provoke them to commit a crime. ...

The model is carried out in a covert manner, i.e. a person to whom it is applied is unaware of it, as, otherwise, it would become ineffective. Persons to whom lawful actions that exhibit elements of crime are applied acquire the real possibility of filing a complaint against, in their opinion, the unreasonable and unlawful actions of undercover agents only after they become aware of the model applied against them; however, this is justifiable. ...

[...]

... no forms of operational activities, including a criminal conduct simulation model, may be applied against the President of the Republic.

[...]

The immunity of a member of the Seimas is narrower than that of the President of the Republic: if there is the consent of the Seimas, a member of the Seimas may be held criminally liable. Therefore, the provisions of the Constitution do not prohibit such a legal regulation by which the application of the model and other forms of operational activities against a member of the Seimas, as well as against other persons, are permissible.

Ignorance of the law exempts no one from responsibility (Paragraph 3 of Article 7 of the Constitution)

The Constitutional Court's ruling of 8 May 2000

Under Paragraph 3 of Article 7 of the Constitution, ignorance of the law exempts no one from responsibility. The laws of the Republic of Lithuania prohibiting certain acts and providing for responsibility in cases of their commission are accessible and known to the public. All laws and legal acts are officially published in the official gazette *Valstybės žinios*. Therefore, it is presumed that every individual, when violating prohibitions established in laws, is aware of the fact that this will lead to the particular reaction of state law enforcement institutions and comprehends that for a committed crime the state will apply strict measures against him/her, and that such measures will correct, hinder, or stop his/her unlawful conduct.

The prohibition on compelling persons to give evidence against themselves, or their family members, or close relatives (Paragraph 3 of Article 31 of the Constitution)

The Constitutional Court's ruling of 19 September 2000

... Article 31 of the Constitution contains the provision that persons must not be compelled to give evidence against themselves, or their family members or close relatives. In penal laws, there are norms permitting a witness to refuse to testify on such a basis. However, in cases where such persons, being aware that they have the right to refuse to testify, agree to give evidence as witnesses but, later, intentionally commit perjury, they may be held criminally liable.

The proportionality of responsibility for violations of law

The Constitutional Court's ruling of 2 October 2001

Establishing administrative responsibility for violations of law, the legislature must observe the principles consolidated in the Constitution. The entire legal system must be based on the constitutional principle of a state under the rule of law; the said principle also implies the proportionality of established legal responsibility.

The Constitutional Court has held that the measures established by the state for violations of law must be proportionate to a violation of law, must be in line with the legitimate and generally important objectives sought, and must not restrain a person clearly more than necessary in order to achieve these objectives. The constitutional principles of justice and a state under the rule of law also mean that “there must be a fair balance (proportion) between the objective sought and the means to attain this objective, as well as between the violations of law and the penalties established for these violations. These principles preclude imposing such penalties for violations of law and such sizes of fines that would evidently be disproportionate to the violation of law and the objective sought” (ruling of 6 December 2000).

Thus, in the course of the legislative establishment of responsibility and its implementation, a fair balance must be sustained between the interests of society and those of a person so as to avoid unreasonable limitations on the rights of persons. On the basis of this principle, the rights of persons may be limited, by means of a law, to the extent only necessary for the protection of public interests, and there must be a reasonable relation between the adopted measures and the legitimate and generally important objective sought. In order to achieve this objective, such measures may be established that would be sufficient and would not limit the rights of persons more than necessary.

The established punishments must provide courts with the possibility of administering justice (Article 109 of the Constitution)

The Constitutional Court's ruling of 10 June 2003

According to Article 109 of the Constitution, in the Republic of Lithuania, justice is administered only by courts (Paragraph 1); when administering justice, judges and courts are independent (Paragraph 2); when considering cases, judges obey only the law (Paragraph 3). Therefore, punishments established in a penal law and their system must be such that a court would be able to administer justice when imposing punishments.

Under the Constitution, it is not allowed to establish in a penal law such a legal regulation (punishments or their sizes) on the basis of which a court, taking account of all circumstances of a case and

applying a penal law, would not be able to individualise the punishment that is imposed on a concrete person for a concrete criminal act.

The legislature, having the constitutional powers to establish punishments for criminal acts and sizes of these punishments, has the duty to provide maximum limits of punishments for certain criminal acts. If the maximum limit of the punishment for a particular criminal act were not established in a penal law, the preconditions for imposing unreasonably strict punishments and, thus, for violating human rights and freedoms would be created. According to the Constitution, the legislature may also establish minimum limits of punishments for certain criminal acts.

By specifying certain acts as crimes and establishing minimum and maximum limits of punishments for such acts, the legislature may use various ways of consolidating the sizes of the said punishments, and may indicate the minimum or maximum limit of a punishment in the sanction of the norm of a penal law that establishes responsibility for a certain criminal act.

Having chosen such a way of formulating a sanction for the commission of a criminal act where the article itself, establishing responsibility for the specified criminal act, provides for such a minimum punishment of imprisonment that is strict, the legislature must, at the same time, by means of a law, establish such a legal regulation according to which a court, by imposing a punishment for this criminal act, must have the possibility of taking account of all circumstances of the case that mitigate criminal responsibility, as well as of circumstances that are not *expressis verbis* specified in the law, and to impose a punishment that is milder than that provided for under the law.

[...]

It should be noted that the constitutional right to a fair trial means, *inter alia*, not only that the principles and norms of criminal procedure law must be observed in court proceedings, but also that the punishment established in a penal law and imposed by a court must be just; a penal law must provide for all opportunities for a court to impose, in consideration of all circumstances of the case, a just punishment on the person who committed a criminal act. The imposition of an unjust punishment would imply that the right of a person to a fair trial is violated; consequently, this would imply that Paragraph 2 of Article 31 of the Constitution and the constitutional principle of a state under the rule of law are also violated.

Imposing a milder punishment

The Constitutional Court's ruling of 10 June 2003

According to the Constitution, the legislature, specifying certain acts as crimes in a penal law and establishing punishments for them and the minimum limit of these punishments, is also empowered to establish the grounds under which a punishment that is milder than that provided for by law may be imposed.

[...]

... having chosen such a way of formulating a sanction for the commission of a criminal act where the article itself, establishing responsibility for the specified criminal act, provides for such a minimum punishment of imprisonment that is strict, the legislature must, at the same time, by means of a law, establish such a legal regulation according to which a court, by imposing a punishment for this criminal act, must have the possibility of taking account of all circumstances of the case that mitigate criminal responsibility, as well as of circumstances that are not *expressis verbis* specified in the law, and to impose a punishment that is milder than that provided for under the law.

... the Constitution consolidates human rights and freedoms, other constitutional values that must be protected and defended ... one of the means for protecting human rights and freedoms and other constitutional values is criminal responsibility for criminal acts. Therefore, the imposition of a punishment that is milder than that provided for under the law is not a rule, but an exception: a court may impose a punishment that is milder than that provided for under the law only if there exist special circumstances mitigating responsibility, where a punishment imposed without taking account of those circumstances would obviously be unjust. A court has the duty to apply the institution of a punishment that is milder than

that provided for under the law especially attentively and carefully, so that the interests of a victim, society, and those of the state would not be violated. In each particular case, the decision of a court to impose a punishment that is milder than that provided for under the law must be reasoned. If a punishment that is milder than that provided for under the law is imposed groundlessly and unreasonably, justice would not be administered. This would be in conflict with justice and the constitutional principle of a state under the rule of law.

The presumption of innocence (Paragraph 1 of Article 31 of the Constitution)

The Constitutional Court's ruling of 29 December 2004

Paragraph 1 of Article 31 of the Constitution prescribes: "A person shall be presumed innocent until proved guilty according to the procedure established by law and declared guilty by an effective court judgment."

The presumption of innocence consolidated in Paragraph 1 of Article 31 of the Constitution is one of the most important guarantees of the administration of justice in a democratic state. It is a fundamental principle of administering justice in the process of criminal cases and an important guarantee of human rights and freedoms. It is presumed that a person has not committed a crime until his/her guilt is proved according to the procedure established by law and he/she is declared guilty by an effective court judgment. The presumption of innocence is inseparably linked with respect for and the protection of other constitutional human rights and freedoms, as well as acquired rights. It is especially important that state institutions and officials respect the presumption of innocence. It should be noted that public persons should in general restrain from referring to a person as a criminal until the said person is proved guilty of committing a crime according to the procedure established by law and declared guilty by an effective court judgment. Otherwise, human honour and dignity could become violated and human rights and freedoms could be undermined.

The presumption of innocence consolidated in Paragraph 1 of Article 31 of the Constitution may not be interpreted only linguistically and as one that is linked only with the administration of justice in the process of criminal cases. The presumption of innocence, which is consolidated in Paragraph 1 of Article 31 of the Constitution, when evaluated in the context of other provisions of the Constitution, has a broader content and must not be linked only with criminal legal relationships.

Crimes; the obligation of the state to ensure effective protection against criminal attempts

The Constitutional Court's ruling of 29 December 2004

Crimes are violations of law by which human rights and freedoms, as well as other values protected and defended by the Constitution, are grossly violated. The mission of the state as the political organisation of all society is to ensure human rights and freedoms and to guarantee the public interest; therefore, when fulfilling its functions and acting in the interests of all society, the state has the obligation to ensure the effective protection of human rights and freedoms, other values protected and defended by the Constitution, every individual and all society against, *inter alia*, criminal attempts.

The Constitution takes a negative attitude to crimes as social evil; this attitude is reflected in various articles of the Constitution, *inter alia*, the ones in which the notions "crime", "criminal actions", "criminal" are used directly. For example, according to Paragraph 2 of Article 24 of the Constitution, without the consent of the resident, it is not be permitted to enter his/her home otherwise than, *inter alia*, according to the procedure established by law when this is necessary to apprehend a criminal; according to Paragraph 4 of Article 25 of the Constitution, the freedom to express convictions and to impart information is incompatible with criminal actions – incitement to national, racial, religious, or social hatred, incitement to violence or to discrimination, as well as defamation and disinformation; according to Article 27 of the Constitution, convictions, practised religion, or belief may not serve as a justification, *inter alia*, for a crime; according to Article 31 of the Constitution, a person is presumed innocent until proved guilty according to the procedure established by law and declared guilty by an effective court judgment (Paragraph 1); a person charged with committing a crime has the right to a public and fair hearing

of his/her case by an independent and impartial court (Paragraph 2); punishment may be imposed or applied only on the grounds established by law (Paragraph 4); no one may be punished twice for the same offence (Paragraph 5); a person suspected of committing a crime, as well as the accused, is guaranteed, from the moment of his/her apprehension or first interrogation, the right to defence, as well as the right to an advocate (Paragraph 6); one of the grounds for removing from office the highest-ranking state officials specified in Article 74 of the Constitution (or revoking the mandate of a member of the Seimas) is “found to have committed a crime”.

To ensure the safety of each human being and all society from crimes is a duty of the state and one of its priority tasks, since crimes violate not only human rights and freedoms, as well as other values protected and defended by the Constitution, but also make a negative impact on the living conditions and subsistence level of people; in addition, crimes have a detrimental effect on the foundations of the life of the state and society. If the state fails to take proper actions in order to prevent crimes, the trust in state authority and laws would be destroyed and disrespect for legal order and various social institutions would increase. Therefore, according to the Constitution, the state as the organisation of all society, which must guarantee the public interest, has not only the right, but also the duty to take various lawful measures preventing crimes, as well as restricting and reducing crime. Measures established and applied by the state must be effective.

In a democratic state under the rule of law, the legislature has the right and, at the same time, the duty to prohibit, by means of laws, such acts by which essential harm is inflicted on the interests of persons, society, or those of the state, or if a threat occurs where, due to such acts, the said damage will be inflicted. According to the Constitution, it is allowed to define what acts are criminal and to establish criminal responsibility for such acts only by means of a law. It should be noted that a law may recognise as criminal acts only such acts that are truly dangerous and by which harm is really inflicted on the interests of persons, society, or the state, or if a threat occurs where, due to such acts, the said damage will be inflicted.

Repressive and preventive measures for restricting and reducing crime

The Constitutional Court's ruling of 29 December 2004

The legislature, having considered the threat caused by crimes, the scope of crimes, their occurrence, dynamics, structure, as well as various criminogenic factors, has the duty to establish measures the purpose of which is to protect a person, society, and the state from criminal attempts. Under the Constitution, the legislature has the right to choose various measures of restricting and reducing crime, as well as to establish the conditions and procedure of the application thereof. In doing so, the legislature must pay regard to the Constitution.

Both legal and other than legal (organisational, economic, etc.) measures should be applied when seeking to restrict and to reduce crime. ... the legal measures of restricting and reducing crime differ also in whether they are aimed at reacting to the already committed crime and deterring persons who have already committed crimes and other persons from new criminal attempts (repressive measures), or at preventing crimes, where the risk of committing them is greater in cases where no such measures are taken (preventive measures).

The repressive measures of restricting and reducing crime comprise, *inter alia*, the fact that laws define which acts are criminal and establish punishments for committing such acts. These measures are aimed not only at establishing the legal grounds for punishing persons guilty of committing a crime, but also, by threatening with punishments and establishing the legal grounds for punishing persons who commit crimes, at protecting every person, all society, and the state from criminal attempts. According to the Constitution, the state prosecutes persons who commit crimes, their guilt is proved according to the procedure established by law, and the punishments, established by law, for committed crimes are imposed on them.

When restricting and reducing crime, it is necessary to apply not only repressive, but also preventive measures. In its 9 December 1998 ruling, the Constitutional Court stressed the importance of the system of various effectively applied preventive measures in preventing crimes. It has been mentioned that preventive

measures are aimed at preventing such crimes where the risk of committing them is greater if no such measures are taken.

It should be noted that, although the final objective of the repressive and preventive measures of restricting and reducing crime is the same – they are aimed at eliminating crime, they still have objective differences: they differ in the grounds of their application, direct aim, content, as well as in the legal consequences of their application. Repressive measures are a reaction to an already committed crime and seek to deter persons who have already committed crimes and other individuals from new criminal attempts, while preventive measures are aimed at preventing such crimes where the risk of committing them is greater if no such measures are taken. ... a punishment may be imposed on a person who has committed a crime, whereas preventive measures do not constitute a punishment – their purpose is to prevent a person from committing a crime and, thus, also to protect the public interest. Moreover, in such a way, a person who, according to the data received in a legal manner, would tend to commit a crime unless deterred by preventive measures is ultimately also protected. In addition, it should be noted that preventive measures, which are aimed at restricting and reducing crime, are normally linked with a particular limitation on the implementation of human rights and freedoms; it should be stressed that the said limitation must not deny the essence of these rights and freedoms.

The aforementioned objective differences between repressive and preventive measures also determine the particularities of their legal regulation.

Special danger posed by organised criminal groups (syndicates); the duty of the state to create an effective system of restricting and reducing organised crime

The Constitutional Court's ruling of 29 December 2004

... organised criminal groups (syndicates), crimes committed by them, or the fact that they are going to commit such crimes pose a special threat to a person, his/her rights and freedoms, society, and the state.

It is worth stressing that the majority of especially dangerous crimes, for example, terrorism, trafficking in people, criminal trade in weapons and drugs, money laundering, as well as financial crimes and crimes related to corruption, are often committed namely by organised criminal groups (syndicates). If organised crime were not prevented and organised criminal groups (syndicates) were not prosecuted, a threat would be posed to the constitutional values, *inter alia*, the rights and freedoms of a person, the legal bases of the life of society, which are consolidated in the Constitution, the state as the organisation of all society, as well as to all society.

[...]

... Lithuania as a democratic state under the rule of law ... has the duty to establish and apply both repressive and preventive measures adequate to the threat posed by organised crime. When assessing these measures, it should be noted that, in general, the interpretation that the constitutional recognition of the innate nature of human rights and freedoms, the broad catalogue of innate human rights and freedoms, which is consolidated in the Constitution, and other constitutional institutions do not permit the establishment and application of effective and, if needed, quite strict measures for restricting and reducing organised crime would be misleading. Quite to the contrary, the duty of the state as the organisation of all society to protect a person and the state from the threat caused by crimes obligates it to establish and to unhesitatingly apply effective measures for restricting and reducing crime, including organised crime.

In this context, it should be noted that the Constitution consolidates such a concept of a democratic state where the state not only seeks to protect and defend a person and society from crimes and other dangerous violations of law, but also is able to do this effectively. Thus, the state must create and effectively apply such a system of measures for restricting and reducing crime, especially organised crime, that would also comprise preventive measures adequate to the threat posed by organised crime. Otherwise, according to the Constitution, the duty of the state to ensure the security of each individual and all society, as well as the legal order based on the constitutional values, would not be implemented.

On the other hand, the concept of a democratic state under the rule of law, as entrenched in the Constitution, where such a democratic state seeks and is able to protect and defend a person and society

from crimes and other dangerous violations of law, may not become a basis for violating human rights and freedoms, for restricting them more than necessary in order to achieve legitimate objectives important to society, or for denying by such restrictions the essence of human rights and freedoms. Therefore, preventive measures aimed at restricting and reducing crime, including organised crime, must be established by means of a law that must provide for the grounds and objectives of the application of these measures; a law must also consolidate a system of control over imposing and applying various preventive measures, comprising, *inter alia*, judicial control and the right of a person to apply to a court regarding a violation of his/her rights.

Establishing and applying preventive measures aimed at restricting and reducing organised crime

The Constitutional Court's ruling of 29 December 2004

... when deciding whether a law by which the implementation of the rights and freedoms of a person are limited infringes the constitutional principle of proportionality as one of the elements of the constitutional principle of a state under the rule of law, it is necessary to assess whether the measures established in the law are in compliance with the legitimate objectives important to society, whether these measures are necessary in order to attain the specified objectives, and whether these measures restrict the rights and freedoms of a person clearly more than necessary in order to attain the said objectives.

... jurisdictional and other law-applying institutions, when applying preventive measures aimed at restricting and reducing organised crime that are linked with limitations on the implementation of particular rights and freedoms of a person, must thoroughly assess in every case a concrete situation, investigate all significant circumstances, find out whether it is possible to achieve the same objectives without limiting the implementation of human rights and freedoms, and, having find out that such a limitation is necessary in order to attain the said objectives of applying preventive measures, must ensure that the implementation of these rights and freedoms is not limited more than necessary in order to achieve the said objectives. If this is not done, human rights and freedoms could be violated.

[...]

... in cases where the data, received in accordance with the procedure established under the law, about the relations of persons with organised criminal groups, criminal syndicates, or their members, constitute a sufficient basis for considering that these persons may commit grave crimes, i.e. when particular activity of persons or their relations prove the threat to constitutional values, *inter alia*, human rights and freedoms, the constitutional order, the safety of society and the state, as well as public order, it is allowed to establish, by means of a law, preventive measures that provide for certain control over the conduct of such persons. As such, the preventive measures that are aimed at restricting and reducing organised crime should not be considered a constitutionally unreasonable limitation on the human right to privacy, but only on the condition that they are established by means of a law, if they are necessary in a democratic society in order to ensure the rights and freedoms of other persons and values consolidated in the Constitution, if they do not deny the nature and essence of the right of an individual to privacy, and if they are proportionate to the objective sought when this objective may not be attained by any other means. When applying the aforementioned preventive measures, jurisdictional and other law-applying institutions must assess in every case a particular situation, investigate all important circumstances, and find out whether the same objectives may be attained without interfering with the private life of an individual and the privacy of family life and without limiting the human right to privacy more than necessary in order to achieve the said important social and constitutionally justifiable objective.

In order to protect a person from an arbitrary and unlawful restriction on his/her privacy, the preventive measures interfering with the exercise of the human right to private life may be imposed only on the grounds established under the law, only by following the procedure prescribed in the law, and only by providing for the right of a person to file a complaint against an imposed preventive measure with a court.

[...]

... As such, the preventive measures that are aimed at restricting and reducing organised crime should not be considered a constitutionally unreasonable limitation on freedom of movement of a person, as well

as the right to freely choose the place of residence in Lithuania and the right to leave Lithuania freely; however, these provisions are applicable only if they are established by means of a law, if they are necessary in a democratic society in order to protect the values defended and protected by the Constitution, if they do not deny the nature and essence of freedom of movement of a person, as well as the right to freely choose the place of residence in Lithuania and the right to leave Lithuania freely, and if they are proportionate to the sought objective that may not be achieved in any other manner. The jurisdictional and other law-applying institutions, when applying the aforementioned preventive measures, must thoroughly assess in every case the specific situation, must investigate all significant circumstances, must find out whether it is possible to achieve the same objectives without interfering into freedom of movement of a person, the right to freely choose the place of residence in Lithuania, and the right to leave Lithuania freely, without limiting freedom of movement of a person more than necessary in order to achieve the said socially important and constitutionally reasonable objective.

[...]

... it is not permitted to limit the human right to freely choose an occupation or business by preventive measures aimed at preventing organised crime.

The proportionality of responsibility for violations of law; the differentiation (individualisation) of sanctions for violations of law

The Constitutional Court's ruling of 3 November 2005

The constitutional principle of justice requires that established penalties for violations of law (thus, also imposed administrative penalties and monetary fines) be differentiated so that, when applying them, it would be possible to take into consideration the nature of a violation of law, circumstances mitigating responsibility, and other circumstances so that, in view of that, it would be possible to impose a penalty that is milder than the minimum penalty provided for in the sanction (ruling of 26 January 2004).

If a law does not establish differentiated amounts of monetary fines, but rather consolidates considerably high monetary fines of strictly defined amounts, and, if the respective law or other laws provide no possibility of differentiating legal responsibility for the respective violation of law, then, when a monetary fine is imposed, there is no possibility of individualising its amount when taking account of the character, dangerousness (gravity), scale, and other features of a violation of law, as well as of the circumstances mitigating responsibility and of other circumstances (due to which a particular monetary fine would be too high for the violator of law, since it would be disproportionate (inadequate) for a committed violation of law; thus, it would be unjust); such a legal regulation would not be in line with the principles of justice and a state under the rule of law, which are entrenched in the Constitution.

... the constitutional principle of justice, thus, the constitutional principle of a state under the rule of law as well, would also be deviated from if a law consolidated not a monetary fine of a strictly defined amount for violations of law, but such minimum and maximum monetary fines that would permit individualising the amount of an imposed fine to a certain extent, however, notwithstanding this, these monetary fines would be too strict for violators of law just the same, i.e. they would be considerably high and if, in the course of the application of these sanctions – the imposition of monetary sanctions, it would not be permitted to take account of the character, dangerousness (gravity), scale, and other features of a violation of law (due to which a particular monetary fine would be too high for a violator of law, since it would be disproportionate (inadequate) for a committed violation of law; thus, it would be unjust) and to impose on a violator of law a monetary fine that is smaller than the minimum level of the sanction consolidated in the law.

In this context, it needs to be noted that, under Article 109 of the Constitution, in the Republic of Lithuania, justice is administered only by courts (Paragraph 1); when administering justice, judges and courts are independent (Paragraph 2); when considering cases, judges obey only the law (Paragraph 3). ... penalties established in laws and the system of such penalties must be such that a court would be able to administer justice when imposing penalties.

The fact of essential importance is that the legislature, by choosing such a way of formulating the sanction – a monetary fine – for the commission of an unlawful act where the article that establishes legal responsibility for the said unlawful act provides for such a monetary fine that is considerably high, i.e. such a sanction that is strict for violators, must, at the same time, by means of a law, establish a legal regulation whereby a court, when applying the sanction for the said unlawful act, could, while imposing a monetary fine, take account of all circumstances mitigating responsibility, including those that are not *expressis verbis* specified in the law, and provided there are such circumstances mitigating responsibility or other circumstances due to which a particular monetary fine would clearly be too high for a violator of law, since it would be disproportionate (inadequate) to the committed violation of law and, thus, unjust, impose on a violator a monetary fine that is smaller than that established in the law.

Under the Constitution, the legislature may not establish any such legal regulation whereby a court that, according to the law, adopts a decision on the imposition of a monetary fine for a violation of law would not be able, in general, by taking account of the character, dangerousness (gravity), the scale, and other features of a violation of law (due to which a particular monetary fine would be too high for a violator of law, since it would be disproportionate (inadequate) for a committed violation of law; thus, it would be unjust) and being guided by the criteria of justice and reasonableness, to individualise the amount of a considerably high monetary fine, i.e. a strict (for violators of law) penalty, and to impose a monetary fine smaller than the minimum monetary fine (lowest level of the sanction) or than the monetary fine of a strictly defined amount established in a law. Thus, the powers of a court would be restricted, i.e. the exceptional powers of a court to administer justice, which are consolidated in Paragraph 1 of Article 109 of the Constitution, would be limited and the preconditions would be created for violating the constitutional rights of subjects, *inter alia*, the constitutional right of persons to a fair trial.

The procedural guarantees for persons held legally liable

The Constitutional Court's ruling of 3 November 2005

... provided the size (severity) of certain sanctions established in laws amounts to criminal punishments, regardless of whether these sanctions may be categorised as belonging to a certain type of legal responsibility (criminal, administrative, disciplinary, or other legal responsibility), and no matter how the respective sanctions are named in laws, laws must necessarily establish for persons who are held legally liable under particular laws the procedural guarantees that stem from the Constitution, *inter alia*, from Article 31 thereof. In this context, it needs to be emphasised that the provisions of Article 31 of the Constitution may not be interpreted as meant only for persons who are held criminally liable.

It is also not permitted to disregard this imperative in the cases where laws establish certain sanctions that, although are referred to as “economic sanctions” in laws, according to their content and other features, should be categorised as belonging to the institution of administrative legal responsibility, but their size (severity) amounts to criminal punishments. In such cases, the said procedural guarantees, which stem from the Constitution, for persons who are held administratively liable may be established in laws that consolidate these sanctions and/or other laws regulating the administrative responsibility of subjects (including economic operators) and the administrative process (*inter alia*, administrative legal proceedings), as well as in laws that regulate the activity of courts or in other laws.

The prohibition on punishing a person twice for the same violation of law (*non bis in idem*) (Paragraph 5 of Article 31 of the Constitution); acts committed repeatedly

The Constitutional Court's ruling of 10 November 2005

Paragraph 5 of Article 31 of the Constitution prescribes: “No one may be punished twice for the same offence.”

Paragraph 5 of Article 31 of the Constitution consolidates the principle of *non bis in idem*. This constitutional principle means the prohibition on punishing a person twice for the same unlawful act, i.e. for the same crime, as well as for the same violation of law that is not a crime (rulings of 7 May 2001 and 2 October 2001).

The aforementioned constitutional principle does not mean that different types of responsibility may not be applied to a person for a violation of law (ruling of 7 May 2001).

As such, the constitutional principle of *non bis in idem* does not deny the possibility of applying more than one sanction of the same type (i.e. where such sanctions are defined by the norms of the same branch of law) to a person for the same violation, i.e. the main and additional punishment or the main and additional administrative penalty.

The constitutional principle of *non bis in idem* also means, *inter alia*, that, if a person who commits an unlawful act is held administratively, but not criminally liable, i.e. he/she is imposed a sanction – a penalty for an administrative violation of law, but not for a crime, he/she must not additionally be held criminally liable for the said act.

It should also be mentioned that the constitutional principle of *non bis in idem* may not be interpreted as meaning that it does not allow prosecuting and punishing a person for a violation of law for which legal prosecution in respect of that person was started, but was later dismissed on the grounds that, according to the procedure established by means of laws, were subsequently declared unreasonable and/or illegal, and the person concerned was not held legally liable – no sanction was applied to (no punishment or penalty was imposed on) him/her.

As such, the exemption of a person from one type of legal responsibility on the grounds and procedure established in laws may not be an obstacle for solving the issue on bringing him/her to legal responsibility of another type on the grounds and procedure established in laws.

... the principle of *non bis in idem*, which is consolidated in the Constitution, does not mean that the institution of repeatedly performed actions may not be consolidated in the legal system; it should also be noted that the institution of repeatedly performed actions also includes such a legal regulation where, in the case of a person who commits the same or a different violation of law defined in the same branch of law, i.e. who violates the same or a different legal norm that, according to the law, belongs to the same branch of law, the circumstance that this violation of law is committed repeatedly (therefore, it shows that such a person tends to disregard legal requirements) is incriminated as a circumstance under which the person for a repeatedly committed violation of law may be brought to other, more severe legal responsibility of the same kind, i.e. another, stricter sanction can be applied to him/her for this violation, i.e. a different, stricter punishment or penalty can be imposed on him/her compared with a person who commits the same act for the first time.

However, it should be emphasised that the constitutional principle of *non bis in idem* does not allow treating repetition (from the discussed aspect) as a circumstance under which the kind of administrative legal responsibility established for certain violations of law may be replaced by criminal responsibility due to the fact that a person who has already been punished by an administrative penalty for a certain violation of law has again committed an administrative violation of law.

[...]

... the legislature, while consolidating (from the discussed aspect) the institution of repeatedly performed acts and paying regard to the Constitution, may choose various ways of formulating a legal text. For instance, laws may lay down such a legal regulation where repetition (from the discussed aspect) is treated as an aggravating circumstance for the respective legal responsibility for a repeatedly committed violation of law, which is formally the same as a former violation, whereas the respective article (part thereof) of the law does not specify a formally different violation of law of the same kind. However, the legislature is not prohibited from legislatively establishing such a legal regulation where repetition (from the discussed aspect) would be treated as a circumstance formally qualifying another violation of law of the same kind (i.e. defined by the norms of the same branch of law) and a repeatedly committed violation of law of the same kind (i.e. the same as the former violation or as another violation that is defined by means of the norms of law of the same branch) would formally be named in the respective article (part thereof) as another violation of law of the same kind.

Thus, the constitutional principle of *non bis in idem* does not mean that it is not allowed, by means of a law, to establish such a legal regulation whereby, in the event that a person who has already been punished

for a violation of law commits the same violation of law again, this violation would be qualified according to another norm of the same branch of law, formally treating such a violation as another violation of law, and another, stricter sanction (compared with a person who commits the same act for the first time) would be imposed on a person who has repeatedly committed the same unlawful act. Such a legal regulation, established by means of a law, where a repeated commission of a violation of law of the same kind (violation of the same or another provision which, according to the law, belongs to law of the same branch) is treated as a circumstance formally qualifying another unlawful act, which determines that the person may be brought to another, stricter legal responsibility, i.e. another, stricter sanction can be applied to him/her for this violation – a different, stricter punishment or penalty may be imposed on him/her compared with a person who commits the same act for the first time, should not be regarded as creating the legal preconditions for punishing a person twice for the same act – a previously committed violation of law.

It should also be emphasised that it is not permitted to establish any such legal regulation whereby, when holding a person legally liable for a repeatedly committed violation of law, repetition (from the discussed aspect) would be treated both as a circumstance formally qualifying another violation of law of the same kind and as a circumstance aggravating the legal responsibility for the said violation of law, which would formally be another violation of law. Such a legal regulation would deviate from the *non bis in idem* principle, which is consolidated in Paragraph 5 of Article 31 of the Constitution.

Establishing legal responsibility for unlawful acts

The Constitutional Court's ruling of 10 November 2005

In a democratic state under the rule of law, the legislature has the right and duty to prohibit by means of laws such acts that may essentially harm people, society, or the interests of the state, or where there might be a threat of such harm to appear (rulings of 8 May 2000, 10 June 2003, and 29 December 2004).

When establishing in laws which acts are unlawful, as well as establishing legal responsibility for unlawful acts, the legislature has broad discretion. This discretion also includes the discretion to establish circumstances that would determine sanctions applicable for violations of law. ...

[...]

It should be noted that the constitutional principle of a state under the rule of law would be violated if: (1) legal responsibility were established in a law for such an act that is not dangerous to society; therefore, such an act need not be legally prohibited; (2) a law established such a strict sanction (legal responsibility) for an unlawful act under which a punishment or penalty imposed on a violator would obviously be too harsh, because it would be disproportionate (inadequate) for the committed violation of law; therefore, the said sanction would be unjust; (3) persons who are held liable were not able to make use of certain rights (*inter alia*, the right to the due process of law) that they have according to the Constitution and/or were not able to make use of certain rights that, according to laws, are enjoyed by other persons who are in an analogous situation; in the second case, the constitutional principle of the equality of the rights of persons, thus also Paragraph 1 of Article 29 of the Constitution, would be violated.

In order to prevent illegal acts, it is not always expedient to deem certain acts to be crimes and to impose the most severe measures – criminal punishments – for such acts; every time when it is necessary to decide whether to deem a certain act to be a crime or another violation of law, it is very important to assess what results may be achieved when applying other measures (which are not linked with the application of criminal punishments), *inter alia*, administrative sanctions (ruling of 13 November 1997).

Thus, the legislature, paying regard to the Constitution, *inter alia*, to the imperatives of consistency and internal non-contradiction of the legal system, which arise from the Constitution, may choose by means of which norms of a particular branch of law to define certain violations of law and what sanctions (criminal, administrative, etc.) to establish for them.

When assessing whether legal responsibility should be categorised as belonging to administrative or criminal law, it should be emphasised that there are a number of similarities between administrative and criminal legal responsibility, though there are also essential differences. The dangerousness of administrative violations of law and criminal acts is not the same; the consequences for holding persons

administratively or criminally liable are also different. Administrative penalties may be similar to criminal punishments (ruling of 13 November 1997). However, it should be emphasised that the legislature must seek to achieve the inter-branch compatibility of administrative and criminal sanctions.

The legal situation of persons who are held administratively liable and of those who are held criminally liable must not be the same, because the grounds themselves of this legal responsibility are different: the former have committed administrative violations of law ... while the latter have committed crimes or other violations of law that are established in a penal law. As such, the establishment of legal responsibility of various kinds for violations of law may not be the grounds to question the compliance of the respective legal regulation established in laws with the constitutional principles of the equality of rights and a state under the rule of law. Thus, the mere fact that, according to laws, certain unlawful acts are defined as administrative violations of law (even though the severity of administrative penalties established for them amounts to criminal punishments), while other unlawful acts are defined as crimes or other acts violating penal laws, does not mean that the constitutional principles of the equality of the rights of persons and a state under the rule of law are deviated from.

The proportionality of responsibility for violations of law; the differentiation (individualisation) of sanctions for violations of law

The Constitutional Court's ruling of 10 November 2005

When establishing sanctions for violations of law, it is necessary to respect the constitutional principle of a state under the rule of law, *inter alia*, the requirements of reasonableness, justice, and proportionality. The principle of proportionality, which arises from the Constitution, means that the established legal measures must be necessary in a democratic society and suitable for achieving legitimate and universally important objectives sought (there must be a balance between such objectives and measures); the said measures may not restrict the rights of persons more than necessary in order to achieve the said objectives and, if those legal measures are related to the sanctions for a violation of law, in such a case, the aforementioned sanctions must be proportionate to a committed violation of law (rulings of 13 December 2004 and 29 September 2005). It is not permitted to establish for violations of law such punishments or penalties (*inter alia*, such sizes thereof) that would obviously be disproportionate (inadequate) to violations of law and to the purpose of punishments or penalties. Thus, laws must formulate sanctions in such a way that, in the course of their application, it would be possible to take account of the nature of a violation of law and circumstances mitigating responsibility or other circumstances so that a punishment or penalty would not be unjust or inadequate to a committed violation of law.

It should be noted that, as such, the consolidation of strict sanctions (for violators of law) for violations of law (*inter alia*, high monetary fines for administrative violations of law) in laws may not be simply (without assessing the character of a violation of law, its dangerousness (gravity), scale, as well as its other features and circumstances) interpreted as unjust or inadequate to those violations of law.

[...]

An imposed punishment or penalty must be just. According to the Constitution, when imposing a sanction for a violation of law, a court must have the possibility of taking account of all circumstances mitigating responsibility, as well as of those that are not *expressis verbis* established in the law and the possibility of imposing on a violator such a sanction – punishment or penalty – that would be milder than that established in the law. Having chosen such a way of formulating the sanction – a monetary fine – for committing an unlawful act where the article that lays down legal responsibility for the said unlawful act establishes such a monetary fine that is considerably high, i.e. such a sanction that is strict for violators, the legislature must, at the same time, establish, by means of a law, such a legal regulation whereby a court, when applying the sanction for the said unlawful act, could, while imposing a monetary fine, take account of all circumstances mitigating responsibility, including those that are not *expressis verbis* specified in the law, and provided there are such circumstances mitigating responsibility or other circumstances due to which a particular monetary fine would clearly be too high for a violator of law, since it would be

disproportionate (inadequate) to the committed violation of law, thus, unjust, impose on a violator a monetary fine that is smaller than that established in the law, i.e. a monetary fine that is smaller than the minimum monetary fine (lowest level of the sanction) or the fine of a strictly determined amount that is established in the law (rulings of 10 June 2003 and 3 November 2005). The imposition of a smaller monetary fine than that established in the law must not be the rule, but an exception – it can be imposed by a court only under such special circumstances mitigating responsibility or in such other circumstances where the disregard of which would lead to the imposition of a fine in the amount established in the law where the said fine would obviously be unjust. A court, when imposing fines smaller than those established in the law, must do that especially attentively and carefully in order not to violate the interests of a person, society, and the state.

The procedural guarantees for persons held legally liable

The Constitutional Court's ruling of 10 November 2005

... provided the size (severity) of certain sanctions established in laws amounts to criminal punishments, regardless of whether these sanctions may be categorised as belonging to a certain type of legal responsibility (administrative, disciplinary, or other legal responsibility), and no matter how the respective sanctions are named in laws, laws must necessarily establish, for persons who are held legally liable under particular laws, the procedural guarantees that stem from the Constitution, *inter alia*, from Article 31 thereof, the provisions of which may not be interpreted as meant only for persons who are held criminally liable (ruling of 3 November 2005). The said procedural guarantees, which arise from the Constitution, are the independence and impartiality of a court, the presumption of innocence, the prohibition on compelling persons to give evidence against themselves, or their family members or close relatives, the application of a sanction (imposition of a punishment or penalty) only on the basis of a law, the prohibition on punishing a person twice for the same unlawful act (*non bis in idem*), the right of a person to defence from the moment of detention or the first interrogation, the right to have an advocate, the principle of adversarial argument during a trial, the right of a person with no knowledge of Lithuanian to participate in judicial actions through a translator, etc.

The prohibition on punishing a person twice for the same violation of law (*non bis in idem*) (Paragraph 5 of Article 31 of the Constitution)

The Constitutional Court's ruling of 21 January 2008

... the constitutional principle of *non bis in idem* does not prohibit applying to a person the prohibition sanction – a preventive measure – together with another administrative penalty.

Thus, as such, the constitutional principle of *non bis in idem* does not deny the possibility of imposing more than one sanction on a person for the same violation of law. It is possible to answer whether the respective legal regulation violates the said constitutional principle only upon assessing the nature of violations of law for which the respective sanctions are established, as well as socially significant objectives that are sought by the legislature. The fact whether a certain administrative penalty (or punishment) established under the law is assigned to the main or additional categories, or whether it is not assigned to any of these categories, is of no significance from the aspect of the compliance of the respective legal regulation with the constitutional principle of *non bis in idem*, because the division of administrative penalties (as well as punishments) into main and additional ones stems not from the Constitution, but from a law, i.e. from ordinary law.

The proportionality of responsibility for violations of law; the differentiation (individualisation) of sanctions for violations of law

The Constitutional Court's ruling of 21 January 2008

The Constitutional Court has held that the constitutional principles of justice and a state under the rule of law also imply that the measures established by the state for violations of law must be

proportionate (adequate) to the violation of law, they must be in line with the legitimate and generally important objectives sought, they may not restrain a person clearly more than necessary in order to reach these objectives; there must be a fair balance (proportionality) between the pursued objective to punish the violators of law and to ensure the prevention of the violations of law and the measures chosen for reaching this objective; the constitutional principle of justice requires that established penalties be differentiated so that, when applying them, it would be possible to take account of the nature of a violation of law, circumstances mitigating responsibility, and other circumstances, so that, in view of that, it would be possible to impose a penalty that is milder than the minimum penalty provided for in the sanction, etc.; monetary fines established in laws for violations of law must be of such an amount that is necessary in seeking the legitimate and socially significant objective – to ensure that laws are observed and that established duties are carried out (rulings of 6 December 2000, 2 October 2001, 26 January 2004, 3 November 2005, and 10 November 2005).

The powers of a court in considering cases of administrative violations of law

The Constitutional Court's ruling of 28 May 2008

When considering a case of an administrative violation of law, a court (judge) must objectively and impartially investigate, verify, and assess the data (evidence) present in the case of the commission of an administrative violation of law and must adopt a fair decision regarding the guilt of a person who is accused of committing this violation of law. It needs to be noted that such situations are also possible where, during the consideration of a case in a court, such circumstances come to light that are important in order to adopt a fair decision, but which were not established by the person who drew up the administrative law violation protocol, or where the material submitted to a court is not sufficient in order to adopt a fair decision. In such case ... a court (judge), when seeking to objectively and comprehensively investigate all circumstances of a case and to establish the truth in it, has the powers to perform the necessary procedural actions, since the administration of justice may not depend only on what material is submitted to a court. ... when performing procedural actions, a court must act in such a way that would not create any preconditions for doubting its impartiality or independence.

It needs to be noted that the powers of a court (judge) to collect evidence when considering the case of an administrative violation of law certainly do not mean that persons who draw up administrative law violation protocols are exempted from the duty to collect evidence.

Crimes; the obligation of the state to ensure effective protection against criminal attempts; criminal responsibility for criminal acts

The Constitutional Court's ruling of 8 June 2009

The Constitutional Court has held the following on more than one occasion:

– the striving for an open, just, and harmonious civil society and a state under the rule of law, which is consolidated in the Preamble to the Constitution, implies that it is obligatory to try to ensure the safety of every individual and all society from criminal attempts against them (rulings of 8 May 2000 and 16 January 2006);

– crimes are violations of law that especially grossly violate human rights and freedoms, as well as other values protected and defended by the Constitution, make negative impact on the living conditions and the subsistence level of people, and are detrimental to the foundations of the life of the state and society (rulings of 8 May 2000, 29 May 2004, and 16 January 2006);

– one of the means for protecting human rights and freedoms, as well as other constitutional values, is criminal responsibility for criminal acts (rulings of 10 June 2003 and 4 July 2003);

– the mission of the state as the political organisation of all society is to ensure human rights and freedoms and to guarantee the public interest; therefore, while exercising its functions and acting in the interests of all society, the state has the obligation to ensure the effective protection of human rights and freedoms, other values protected and defended by the Constitution, every person and all society against, *inter alia*, criminal attempts (rulings of 29 December 2004 and 16 January 2006);

– if the state fails to take proper actions in order to prevent crimes, the trust in state authority and laws would be destroyed and disrespect for legal order and various social institutions would increase. Therefore, according to the Constitution, the state as the organisation of all society, which must guarantee the public interest, has not only the right, but also the duty to take various lawful measures in order to prevent crimes, as well as to restrict and reduce crime (rulings of 8 May 2000 and 16 January 2006);

– the measures, established and applied by the state, for preventing crimes, as well as restricting and reducing crime, must be effective (rulings of 8 May 2000 and 16 January 2006);

– in a state under the rule of law, the legislature has the right and, at the same time, the duty to prohibit, by means of laws, such acts by which essential harm is inflicted on the interests of persons, society, or those of the state, or if a threat occurs where, due to such acts, the said damage will be inflicted; laws define which acts are considered crimes and establish punishments for committing such acts; by threatening with criminal punishments, laws protect individuals and society from criminal attempts against them and establish the grounds for punishing persons who commit crimes in order to correct them (rulings of 8 May 2000, 10 June 2003, and 16 January 2006);

– the legislature, when regulating the relationships connected with the establishment of criminal responsibility for criminal acts, has broad discretion; in view of the nature, dangerousness (gravity), scale, and other features of criminal acts, as well as in view of other significant circumstances, it may, *inter alia*, consolidate a differentiated legal regulation and establish different legal responsibility for particular criminal acts. However, this discretion of the legislature is not absolute: the legislature must pay regard to the norms and principles of the Constitution, *inter alia*, the imperatives of regularity and inner consistency of the legal system, which arise from the Constitution (ruling of 16 January 2006).

Criminal responsibility of legal persons

The Constitutional Court's ruling of 8 June 2009

... the Constitution does not *expressis verbis* prescribe that only a natural person may be a subject of criminal responsibility and that a legal person may not be a subject of such responsibility.

... the specificity of a legal person is determined, *inter alia*, by the fact that, having legal capacity and capability, a legal person is a participant of legal relationships through natural persons (its head, an authorised representative, etc.). ... the activity of a legal person is inseparable from the activity of particular natural persons through which such a legal person acts and without the activity of which the activity of such a legal person would be essentially impossible. ... when establishing criminal responsibility of a legal person, the legislature must also take account of the aforementioned specificity of a legal person as a subject of legal relationships. The specificity of a legal person also determines the particularities of the application of certain legal institutions of criminal law to legal persons. In this context, it also needs to be noted that, due to such specificity of a legal person (compared with a natural person), it is not allowed to apply, to a legal person, certain norms of criminal law that are established for natural persons.

Thus, the specificity of a legal person as a subject of legal relationships is determined by the fact that [the law] may establish a differentiated legal regulation linked with the criminal responsibility of a natural person and a legal person. However, in this context, it needs to be noted that, when also regulating criminal responsibility of legal persons, the legislature must pay regard to the norms and principles of the Constitution, *inter alia*, those consolidated in Article 31 thereof.

[...]

... under the Constitution, *inter alia*, Article 31 thereof, as well as according to the principle of a state under the rule of law, the legislature, when regulating the relationships connected with the criminal responsibility of a legal person, must establish such a legal regulation that a court, when deciding the question of the criminal responsibility of a legal person, *inter alia*, the question of the imposition of a punishment on such a legal person, could take account of all circumstances, *inter alia*, the circumstances that increase or decrease the dangerousness of a criminal act committed by that legal person. In this context, it needs to be noted that the specificity of a legal person as a subject of legal relationships (*inter alia*, the fact that a legal person has an independent structure and is a participant of legal relationships through

certain natural persons) also implies that a law may also recognise such circumstances as circumstances increasing or decreasing the dangerousness of a criminal act committed by a legal person that, normally, may not be regarded as circumstances increasing or decreasing the dangerousness of a criminal act committed by a natural person. For instance, the dangerousness of a criminal act committed by a legal person may be determined by the policy, strategy, organisational culture, etc. of the activity of a legal person. For example, the dangerousness of a criminal act committed by a legal person is assessed in one way when the policy of the activity of a legal person and its organisational structure are targeted in order that the said legal person could not act criminally, while it is assessed in a different way when the strategy of the activity of a legal person and its internal procedures create the preconditions for that legal person to act in a criminal manner (or are even oriented in order that the said legal person would act in a criminal manner), when such a legal person recognises the results of a criminal act committed for its benefit *ex post facto*, etc.

It also needs to be noted that the existence or non-existence of the said circumstances in a criminal act committed by a legal person may be of crucial importance for the exemption of such a legal person from criminal responsibility.

[...]

The specificity of a legal person as the subject of a criminal act, i.e. the fact that it is an independent subject of legal relationships having legal capacity and capability, independent name, and organisational integrity, that its property is separated from the property of its participants, but also that it is a participant of legal relationships through the natural persons who act on its behalf, also implies the specificity of its guilt. The guilt of a legal person must be linked with the guilt of a natural person who acts for the benefit or in the interests of the said legal person. ...

Punishment may be imposed or applied only on the grounds established by law (Paragraph 4 of Article 31 of the Constitution)

The Constitutional Court's ruling of 8 June 2009

... Paragraph 4 of Article 31 of the Constitution, according to which punishment may be imposed or applied only on the grounds established by law, means, *inter alia*, that, under the Constitution, the legislature has the duty to establish, by means of a law, which acts are crimes, as well as criminal responsibility for such acts. By establishing which acts are crimes, as well as criminal responsibility for them, the legislature is bound by the principles of natural justice and proportionality, which are established in the Constitution, and by other requirements found in a state under the rule of law. Under the Constitution, the legislature may specify by means of a penal law only such acts as crimes where the said acts are really dangerous and by which huge harm is inflicted on the interests of persons, society, and those of the state. Paragraph 4 of Article 31 of the Constitution, according to which punishment may be imposed or applied only on the grounds established by law, also means that the legislature must establish punishments for criminal acts and sizes of such punishments only by means of a law; punishments must be established for each criminal act. The principle of natural justice consolidated in the Constitution implies that punishments established by means of a penal law must be just. The constitutional principles of justice and a state under the rule of law mean, *inter alia*, that the measures that are applied by the state must be adequate to the objective sought. Thus, punishments must be adequate to the criminal acts for which they are established; it is not permitted to establish such punishments and their sizes for criminal acts that would obviously be inadequate to a criminal act and the purpose of a punishment. Punishments and their sizes must be differentiated in a penal law when taking account of the dangerousness of criminal acts (ruling of 10 June 2003) ...

The prohibition on punishing a person twice for the same violation of law (*non bis in idem*) (Paragraph 5 of Article 31 of the Constitution)

The Constitutional Court's ruling of 8 June 2009

When interpreting the constitutional principle consolidated in Paragraph 5 of Article 31 of the Constitution ... it needs to be noted that the principle of *non bis in idem* means that it is prohibited to punish twice the same person for the same criminal act; however, this constitutional principle does not deny the possibility of holding criminally liable two or more persons whose guilt is proved.

... when holding a natural person criminally liable for having committed an act that was committed by the said natural person, who has certain defined features, and a legal person that is recognised guilty of the fact that the said natural person with certain defined features committed a criminal act for the benefit (or in the interests) of the legal person, two different subjects – a natural person and a legal person – are held criminally liable for one act. Therefore, a natural person and a legal person, as subjects of criminal responsibility, may not be equated one with the other.

Establishing administrative responsibility for dangerous acts

The Constitutional Court's ruling of 28 May 2010

... the Constitution does not prohibit defining, by means of a law, administrative violations of law – acts that are less dangerous than criminal acts – and establishing administrative responsibility for such acts. Only those acts that are less dangerous than criminal acts and by which damage is inflicted on the interests of a person, society, or the state may be declared, by means of a law, administrative violations of law.

Under the Constitution, the legislature, when regulating the relationships connected with the establishment of administrative responsibility for committing administrative violations of law, has broad discretion; *inter alia*, it may, taking account of the nature, dangerousness, and other features of administrative violations of law, as well as of other important circumstances, consolidate a differentiated legal regulation and establish different administrative responsibility for particular administrative violations of law. However, this discretion of the legislature is not absolute: while doing so, the legislature must pay regard to the norms and principles of the Constitution, *inter alia*, the constitutional principle of a state under the rule of law, as well as the principle of the equality of the rights of persons, which is consolidated in the Constitution, *inter alia*, Article 29 thereof.

[...]

... the legislature, when regulating the relationships connected with administrative responsibility for committing administrative violations of law, *inter alia*, when imposing limitations on the administrative responsibility of some subjects for committing administrative violations of law, must pay regard to the imperatives, arising from Article 29 of the Constitution, that legal responsibility for the same administrative violations of law must be established by means of a law and applied to all persons, save the exceptions provided for in the Constitution.

In this context, it also needs to be noted that, under the Constitution, it is only the President of the Republic who has immunity not only from criminal, but also from administrative responsibility: while in office, he/she may be neither detained nor held criminally or administratively responsible (Paragraph 1 of Article 86 of the Constitution). In its ruling of 8 May 2000, the Constitutional Court held that the legal status of the President of the Republic as the Head of State is an individual one and is different from that of the rest of citizens.

Under the Constitution, the members of the Seimas, ministers, and judges also have partial immunity from certain administrative measures: the members of the Seimas may not be held criminally liable or be detained, or have their liberty restricted otherwise, without the consent of the Seimas (Paragraph 2 of Article 62 of the Constitution); the Prime Minister, ministers, and judges may not be held criminally liable or be detained, or have their liberty restricted otherwise, without the prior consent of the Seimas or, in the period between the sessions of the Seimas, without the prior consent of the President of the Republic (Article 100 and Paragraph 2 of Article 114 of the Constitution).

It needs to be noted that, under the Constitution, any other persons, *inter alia*, servicemen and statutory state servants (officials), do not have any immunity from administrative responsibility.

Differentiating criminal responsibility

The Constitutional Court's ruling of 4 June 2012

The legislature may, taking account of the nature, dangerousness (gravity), scale, and other features of criminal acts, as well as other significant circumstances, consolidate a differentiated legal regulation and establish different legal responsibility for particular criminal acts. However, this discretion of the legislature is not absolute: the legislature must pay regard to the norms and principles of the Constitution (rulings of 16 January 2006 and 8 June 2009), *inter alia*, the principles of natural justice and proportionality, other requirements of the principles found in a state under the rule of law, as well as the principle of the equality of rights, which is enshrined in Article 29 of the Constitution.

The principle of natural justice, which is consolidated in the Constitution, implies that punishments established in a penal law must be just; punishments and their sizes must be differentiated in a penal law when taking account of the dangerousness of criminal acts (rulings of 10 June 2003 and 8 June 2009). The dangerousness of criminal acts is determined, *inter alia*, by the values that are infringed upon by these acts.

[...]

It needs to be noted that, when establishing criminal responsibility for criminal acts, the legislature has the discretion to differentiate the said responsibility, taking into account family relationship (and the degree thereof) between a person who committed a criminal act and the one who suffered from that act.

[...]

The life of an individual, the inviolability of his/her person, close family relationships, family, motherhood, fatherhood, and childhood are constitutional values; the constitutional principle of a state under the rule of law implies the discretion of the legislature to establish that persons who attempt on the life and health of their close relatives or family members are subject to strict criminal family relationship, which would be differentiated by taking account, *inter alia*, of the dangerousness of such an attempt.

The powers of a court to individualise penalties imposed for administrative violations of law

The Constitutional Court's ruling of 25 September 2012

In its jurisprudence, the Constitutional Court has expressed its position more than once that a court, when taking account of the significant circumstances of a case, must have the possibility of individualising strict penalties consolidated in the law and imposing a penalty that is smaller than the minimum one provided for in the sanction or a penalty softer than the one provided for under the law (rulings of, *inter alia*, 26 January 2004, 3 November 2005, 10 November 2005, 21 January 2008, and 17 September 2008).

... under the Constitution, *inter alia*, Paragraph 1 of Article 109 thereof and the constitutional principle of a state under the rule of law, the law by which the administrative legal responsibility of persons is established may not consolidate such a legal regulation (penalties, their sizes) whereby a court, when taking account of all circumstances significant for a case, would not be allowed to individualise a strict penalty imposed on a concrete person for a concrete violation of law. By means of a legal regulation, it is necessary to create the legal preconditions for a court to investigate all circumstances significant for a case and to adopt a just decision. Conversely, a legal regulation may not be such that a court would not be allowed, when taking account of all circumstances significant for a case and by following law, without violating the imperatives of justice and reasonableness, which arise from the Constitution, to adopt a just decision and, thus, to administer justice. Otherwise, the powers of a court to administer justice, which arise from the Constitution, *inter alia*, Article 109 thereof, would be violated and the constitutional concept of a court as the institution that administers justice in the name of the Republic of Lithuania, as well as the constitutional principle of a state under the rule of law, would be deviated from.

It should also be noted that, when individualising penalties imposed on infringers, courts must thoroughly assess, in concrete situations, the dangerousness of a violation of law for human rights and freedoms, as well as the interests of society and the state. The situations where it is allowed to impose a penalty for administrative violations of law that is smaller than the minimum one provided for in the sanction, or to impose a softer penalty than provided for in the sanction, or not to impose an administrative

penalty at all, must be exceptional and related to the statement of the existence of exceptional circumstances.

The duty of the state to ensure the safety of the public and public order; the powers of the legislature to establish the conditions and procedure for the entry of weapons and ammunition into civilian circulation and for holding and using them, as well as for issuing and withdrawing permits to acquire a weapon

The Constitutional Court's ruling of 25 January 2013

... the Constitutional Court has noted that, under the Constitution, the institutions of state power and governance are under the obligation to ensure the safety of the public and public order, to protect a person against any attempt on his/her life and health and to defend human rights and freedoms. Weapons and ammunition may be a danger to public order and the safety of the public, to human life and health; therefore, the legislature, when taking account of the necessity to ensure public order and the safety of the public and to protect human rights and freedoms, is empowered to establish the conditions and procedure for the entry of weapons and ammunition into civilian circulation and for holding and using them, as well as for issuing permits to acquire a weapon (ruling of 12 April 2001).

It needs to be noted that weapons and ammunition may be a danger not only to a person possessing weapons and ammunition himself/herself, but to other members of the public, as well as to public order; therefore, the legislature has the duty to establish such conditions and procedure for the entry of weapons and ammunition into civilian circulation and for holding and using them, as well as for issuing and withdrawing permits to acquire a weapon, that would create the preconditions for protecting a person possessing weapons and ammunition, as well as other members of the public, against a possible threat and to ensure public order. When fulfilling the said duty and while exercising broad discretion, the legislature is under the obligation to observe the Constitution; *inter alia*, when establishing the measures limiting the right to acquire and possess the respective weapons and ammunition, which are granted to a person under the conditions and procedure consolidated under the law, the legislature is obliged to pay regard to the principle of proportionality.

The prohibition on compelling persons to give evidence against themselves, or their family members or close relatives (Paragraph 3 of Article 31 of the Constitution)

The Constitutional Court's ruling of 12 April 2013

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

[...]

The Constitutional Court, when interpreting the guarantee consolidated in Paragraph 3 of Article 31 of the Constitution, held that the provision of the Constitution in question is, in substance, related to the particularities and legal situation of a natural person as a subject of legal relationships (ruling of 8 June 2009).

The guarantee consolidated in Paragraph 3 of Article 31 of the Constitution means that a natural person may refuse to give evidence on the basis of which this person himself/herself, his/her family member or close relative could be brought to criminal responsibility, as well as to another type of legal responsibility, if a possible sanction by its nature and size (severity) amounted to a criminal punishment. The legal regulation established in Paragraph 3 of Article 31 of the Constitution may not, however, be interpreted as meaning that a natural person may not voluntarily (i.e. without anybody compelling him/her) give evidence against himself/herself, his/her family members or close relatives (ruling of 8 June 2009).

[...]

When interpreting Paragraph 3 of Article 31 of the Constitution in conjunction with Article 23, it should be noted that an individual, enjoying the guarantee consolidated in Paragraph 3 of Article 31, is not

allowed, *inter alia*, not to comply with the duties established by means of laws for him/her as the owner of an object of ownership.

Establishing criminal responsibility for international crimes

The Constitutional Court's ruling of 18 March 2014

... in order to be in line with the commitment of the Republic of Lithuania, as prescribed in Paragraph 1 of Article 135 of the Constitution, to fulfil, in good faith, its international obligations arising under the universally recognised norms of international law (general international law), *inter alia*, under the *jus cogens* norms that prohibit international crimes, the criminal laws of the Republic of Lithuania that are related to responsibility for international crimes, *inter alia*, genocide, may not establish any such standards that would be lower than those established under the universally recognised norms of international law. Disregard for the said requirement would be incompatible with the striving for an open, just, and harmonious civil society and a state under the rule of law, as consolidated in the Preamble to the Constitution and expressed through the constitutional principle of a state under the rule of law.

Punishment may be imposed or applied only on the grounds established by law (Paragraph 4 of Article 31 of the Constitution)

The Constitutional Court's ruling of 18 March 2014

Paragraph 4 of Article 31 of the Constitution prescribes: "Punishment may be imposed or applied only on the grounds established by law." Thus, the principle of *nulla poena sine lege*, which is consolidated in the said provision of the Constitution, means that no person may be punished for an act that was not punishable by law at the time when it was committed.

It should be noted that the said principle also stems from the constitutional principle of a state under the rule of law. As the Constitutional Court noted in its rulings of 13 December 2004 and 16 January 2006, when law is applied, *inter alia*, it is necessary to observe the following requirements arising under the constitutional principle of a state under the rule of law: responsibility (sanction, punishment) for any violations of law must be established in advance (*nulla poena sine lege*); no act is criminal unless it is defined as such by means of a law (*nullum crimen sine lege*).

Thus, it should be noted that the constitutional principle of a state under the rule of law integrates the following two interrelated principles ...: *nulla poena sine lege* and *nullum crimen sine lege*.

[...]

... in view of Paragraph 1 of Article 135 of the Constitution and the striving for an open, just, and harmonious civil society and a state under the rule of law, as expressed through the constitutional principle of a state under the rule of law, the principle of *nullum crimen, nulla poena sine lege*, which is consolidated in Paragraph 4 of Article 31 of the Constitution and stems from the constitutional principle of a state under the rule of law, is not absolute. Under the Constitution, criminal laws may provide for an exception to the said principle, which would be applicable to crimes established under international law or the general principles of law, *inter alia*, the crime of genocide as defined under the universally recognised norms of international law (i.e. the crime of genocide directed exclusively against national, ethnical, racial, or religious groups); only in that way, regard would be paid to the requirement, which stems from Paragraph 1 of Article 135 of the Constitution and is linked with the striving for an open, just, and harmonious civil society and a state under the rule of law, as expressed through the constitutional principle of a state under the rule of law, that the criminal laws of the Republic of Lithuania related to responsibility for international crimes would not establish any such standards that would be lower than those established under the universally recognised norms of international law. This requirement and, thus, also the principle of *nullum crimen, nulla poena sine lege*, which is consolidated in Paragraph 4 of Article 31 of the Constitution and stems from the constitutional principle of a state under the rule of law, would be disregarded if criminal laws laid down a retroactive effect on the crimes defined exclusively under national law.

[...]

... under the Constitution, as well as under the universally recognised norms of international law, the exception to the principle of *nullum crimen, nulla poena sine lege* is also applicable to deliberate actions that are considered to constitute genocide, i.e. deliberate actions aimed at destroying a significant part of any national, ethnical, racial, or religious group that has an impact on the survival of an entire protected group, comprising certain social or political groups.

It should also be noted that, under the Constitution, as well as under the universally recognised norms of international law, the exception to the principle of *nullum crimen, nulla poena sine lege*, which permits the retroactivity of the criminal laws establishing criminal responsibility for crimes recognised under international law or the general principles of law, is also applicable to crimes against humanity and war crimes, which may be directed, *inter alia*, against certain social or political groups of people.

Establishing the period of the application of criminal responsibility

The Constitutional Court's ruling of 27 June 2016

The Constitutional Court has also held that, when defining criminal acts by means of laws and establishing criminal responsibility for such acts, the legislature has also the discretion to establish the time limits within which criminal responsibility may be applied to persons who commit criminal acts; establishing such time limits, the legislature must take into account, *inter alia*, the nature and dangerousness (gravity) of a criminal act; such criteria may also determine such a legal regulation to the effect that no time limits are applied as regards criminal responsibility for the gravest crimes (ruling of 18 March 2014).

... under the Constitution, the legislature has the discretion to establish various models of calculating the time limits during which criminal responsibility could be applied to persons who committed criminal acts. For instance, it is allowed to establish absolute time limits or they may be related to certain circumstances, for example, filing a charge. When establishing such time limits, the legislature must pay regard to the requirement, which stems from the Constitution, *inter alia*, Paragraph 2 of Article 31 thereof, that such preconditions must be created for a court considering a criminal case that it could act in a way that would make it possible to establish the truth in the criminal case and the issue of the guilt of a person accused of committing a crime would be decided in a fair manner.

... the Constitution, *inter alia*, Paragraphs 1 and 2 of Article 31 thereof, and the constitutional principle of a state under the rule of law imply the duty of the legislature, when regulating criminal procedure relationships in cases where the time limits during which criminal responsibility may be applied to persons who committed criminal acts have expired, to balance the constitutional values – the presumption of innocence and the right of a person to the due court process. The legislature is under the duty to establish such a legal regulation that would create the preconditions for ensuring that a court decision adopted after the time limits during which criminal responsibility may be applied to persons who committed criminal acts have expired would solve the issue of whether the accused person was reasonably charged with committing a criminal act in order to drop the charge in the case where a court decision does not recognise that a person is guilty of having committed a criminal act.

[...]

... during a pretrial investigation, justice is not administered ... a pretrial investigation involves collecting and assessing information that is necessary for deciding whether public charges must be brought against a person and a criminal case must be referred to a court. Consequently, the termination of a pretrial investigation upon the expiry of statutory limitation periods for criminal responsibility means that, within the prescribed periods, no necessary data has been collected to bring charges against a certain person and that there are no grounds to believe that the accused has committed a crime.

It should also be noted that, as mentioned before, the Constitution, *inter alia*, Paragraphs 1 and 2 of Article 31 thereof, and the constitutional principle of a state under the rule of law imply the duty of the legislature, when regulating criminal procedure relationships in cases where the time limits during which criminal responsibility may be applied to persons who committed criminal acts have expired, to lay down

such a legal regulation that would create the preconditions for ensuring that a charge is dropped in the case where such a charge is not confirmed. Consequently, in cases where, upon the expiry of statutory limitation periods, it is ascertained that charges brought against the accused for having committed a crime were unfounded, a court must deliver an acquittal.

Establishing criminal responsibility for criminal acts

The Constitutional Court's ruling of 15 March 2017

When regulating the relationships related to the establishment of criminal responsibility for criminal acts, the legislature has broad discretion; in view of the nature, dangerousness (gravity), scale, and other characteristics of criminal acts, as well as in view of other significant circumstances, it may, *inter alia*, lay down a differentiated legal regulation and establish different legal responsibility for the respective criminal acts. However, this discretion of the legislature is not absolute: the legislature must pay regard to the norms and principles of the Constitution, *inter alia*, the imperatives of the consistency and internal non-contradiction of the legal system, which stem from the Constitution (rulings of 16 January 2006, 8 June 2009, and 18 March 2014).

... under the Constitution, the criminalisation of concrete acts and the differentiation of criminal responsibility for them is, first of all, a matter of the criminal policy pursued by the state, which is decided by the legislature while exercising its wide discretion and taking into account the dangerousness and scale of the said acts, the priorities of crime prevention, as well as other significant circumstances, but without violating the Constitution and the imperatives arising from the Constitution. Thus, even though the legislature must, in every concrete case, assess the expediency of declaring a concrete act to be a criminal one by assessing, at the same time, what results may be achieved by means of other measures, the mere existence of doubts as to the expediency of criminalising a certain act or as to the effectiveness of such a legal regulation does not give grounds for questioning the compliance of this legal regulation with the Constitution, unless it transpires that the said legal regulation, already at the time of its consolidation in legal acts, was clearly directed against the welfare of the Nation and the interests of the State of Lithuania and its society, and clearly denied the values consolidated, defended, and protected by the Constitution.

The legal regulation of the imposition and execution of sentences; the suspension of the execution of sentences

The Constitutional Court's ruling of 18 March 2020

... under the Constitution, *inter alia*, the constitutional principle of a state under the rule of law, taking into account the dangerousness and scale of criminal acts, the priorities of crime prevention, and other significant circumstances, the legislature has broad discretion to decide issues of the criminal policy pursued by the state, *inter alia*, issues of the criminalisation of specific acts and the differentiation of criminal responsibility, among other things, to establish a legal regulation governing the imposition and execution of sentences. In doing so, the legislature must respect, *inter alia*, the requirements, arising from the constitutional principles of a state under the rule of law and justice, that the penal system established in the criminal law is harmonious, stable, and balanced, that such sentences and their lengths for criminal acts are established that are commensurate with the criminal act and the purpose of the penalty, and that sentences and their lengths are differentiated according to the dangerousness of the criminal acts. In this context, it should be noted that the legal regulation establishing the system of penalties in the criminal law may not be changed by taking into account only the attitude developed in society over a certain period of time to certain criminal acts.

... under the Constitution, *inter alia*, Paragraph 2 of Article 31 and Paragraph 1 of Article 109 thereof, and the constitutional principle of a state under the rule of law, when exercising its broad discretion to decide issues of the criminal policy pursued by the state, the legislature must, by means of a legal regulation laid down in the criminal law, create the preconditions for a court, by taking into account all the circumstances of the case, to impose a fair sentence on the person who has committed a criminal act, *inter alia*, in exceptional cases, to impose a less severe sentence than that provided for under the law; the

criminal law may also provide for the possibility for the court to suspend the execution of the imposed sentence, where this is justified having regard to the gravity of the committed criminal act, the personality of the guilty person, the circumstances mitigating his/her criminal responsibility, and other circumstances.

[...]

Thus, under the Constitution, *inter alia*, Paragraph 2 of Article 31 and Paragraph 1 of Article 109 thereof, and the constitutional principle of a state under the rule of law, the legislature has the right to provide for the possibility of suspending the execution of sentences imposed for certain criminal acts, *inter alia*, those that are most serious under the criminal law, but it is not obliged to do so.

The conditions for issuing and withdrawing permits to acquire and possess weapons (ammunition)

The Constitutional Court's ruling of 5 June 2020

... under the Constitution, *inter alia*, the constitutional principle of a state under the rule of law, implementing its duty to establish the conditions and procedure for issuing and withdrawing permits to acquire weapons and ammunition, in order to create the preconditions for ensuring public order and the security of society and protecting human rights and freedoms, the legislature may lay down such measures for limiting the right, acquired under the conditions and in accordance with the procedure laid down by the law, to acquire and possess weapons and ammunition whereby persons having been convicted for committing a criminal act would not be issued permits to acquire weapons and ammunition for a certain period of time specified by the legislature, while the issued permits would be withdrawn. It should also be noted that such a legal regulation must create the possibility of assessing, to the extent possible, the individual situation of each person and, in view of all the important circumstances, refusing to issue a permit to acquire weapons and ammunition to a person having committed a criminal act if, even after the expiry of the time period set by the legislature, this person continues posing a threat to the security of society and public order. In addition, such a legal regulation under which persons having committed certain particularly serious crimes, for which the most severe penalties are provided for, may never be issued permits to acquire certain weapons and ammunition would also be in line with the Constitution, *inter alia*, with the constitutional principle of proportionality.

The conditions for granting the right to drive a vehicle; the sanctions of prohibiting the exercise of the right to drive a vehicle

The Constitutional Court's ruling of 24 July 2020

... under the Constitution, *inter alia*, the constitutional principle of a state under the rule of law, ensuring traffic safety, *inter alia*, road traffic safety, is the public interest. Therefore, the legislature must establish such traffic safety requirements that are necessary to ensure public order and the security of society, as well as human life and health, *inter alia*, it must establish the respective requirements for road users; among others, such requirements must also be laid down for persons seeking to acquire the right to drive vehicles that are related to, *inter alia*, their age, health condition, the knowledge of traffic safety rules, the ability to drive vehicles, and the behaviour of these persons. When establishing such requirements, the legislature must take into account, *inter alia*, the danger to traffic safety caused by road users under the influence of alcohol or drugs, as well as by road users committing gross and/or systematic violations of traffic rules. Thus, under the Constitution, *inter alia*, the constitutional principle of a state under the rule of law, in order to ensure traffic safety, the legislature may establish such a legal regulation on granting the right to drive vehicles under which this right would not, for a certain period of time, be granted to persons who have committed the gravest violations of traffic rules, *inter alia*, who have repeatedly driven vehicles under the influence of alcohol or drugs or who have systematically grossly violated traffic rules.

... under the Constitution, *inter alia*, the constitutional principle of a state under the rule of law, the law may establish sanctions of various types (administrative, criminal), *inter alia*, sanctions of prohibition, for the violations of law committed, *inter alia*, by road users under the influence of alcohol or drugs, as

well as for gross and/or systematic violations of traffic rules; such sanctions of prohibition, *inter alia*, include the deprivation of the right to drive vehicles for a certain period of time.

It should be emphasised that, when establishing both the conditions for granting the right to drive vehicles and the sanctions of prohibiting the exercise of this right, the legislature must respect the imperatives of the consistency and coherence of the legal system, which arise from the constitutional principle of a state under the rule of law, the requirements of reasonableness, justice, and proportionality, as well as the principle of *non bis in idem*, enshrined in Paragraph 5 of Article 31 of the Constitution.

3.2. CRIMINAL PROCEEDINGS

The administration of justice in criminal cases (Paragraph 1 of Article 109 of the Constitution)

The Constitutional Court's ruling of 8 May 2000

Paragraph 1 of Article 109 of the Constitution prescribes: "In the Republic of Lithuania, justice shall be administered only by courts."

The Constitutional Court notes that this provision in criminal procedure law means that a person may not be held guilty of having committed a crime, nor may he/she be subject to a criminal punishment otherwise than by a court judgment and under the law. Performing this function, a court must, during a trial, investigate the circumstances of a case comprehensively, thoroughly, and objectively and decide the case on its merits. It is only a court that may declare a person guilty and impose a punishment on him/her (Paragraph 1 of Article 31 of the Constitution).

Requirements for the laws governing criminal proceedings

The Constitutional Court's ruling of 19 September 2000

Criminal procedure laws must provide for such a procedure of criminal proceedings that would create the preconditions for the speedy and thorough detection of crimes and persons that committed them, for imprisoning guilty persons and, by applying penal laws properly, punishing them justly. An innocent person may not be held criminally liable and convicted.

In establishing the procedure for holding persons criminally liable and for imposing penalties for committed crimes, laws must also provide for the protection of the rights of a person charged with having committed a crime. In its 11 May 1999 ruling, the Constitutional Court noted that, "when guaranteeing the protection of the rights of individuals, it is necessary to pay regard to the fundamental principles of a state under the rule of law; such principles require that jurisdictional and other law-applying institutions be impartial and independent, that they seek to establish the objective truth, and that they adopt their decisions only on the grounds of law. This is possible only if the proceedings are public, the parties to the proceedings have equal rights, and the legal disputes, in particular those regarding the rights of a person, are decided by ensuring that a particular person has the right and possibility of defending those rights. In a state under the rule of law, the right of individuals to defend their rights is unquestionable". Thus, a person may not be declared guilty of having committed a crime, nor any criminal punishment may be imposed on a person without proper court proceedings enabling the accused to be aware of everything with which he/she is charged and on what grounds the accusations against him/her are founded, as well as allowing him/her to prepare and present evidence for his/her defence. This must be ensured by means of criminal procedure norms, which must be in conformity with the constitutional principles of lawfulness, the equality before the law and the court, the impartiality of courts and judges, and those of the public and fair consideration of cases. The participants of trials – the accuser, the accused, counsel for the defence, the victim and his/her representative, the civil plaintiff and the civil respondent and their representatives – must be guaranteed, by means of laws, the equal rights to present evidence, to take part in the investigation into evidence, and to submit pleas. Cases must be considered on the basis of the principle of adversarial argument.

Granting anonymity to witnesses and victims

The Constitutional Court's ruling of 19 September 2000

The Constitution consolidates the protection of human rights, i.e. human life (Article 19), the inviolability of the human person (Article 21), the inviolability of property (Article 23), etc. Thus, a witness or a victim who gives his/her testimony must be properly protected by measures established in laws from any unlawful influence.

At the same time, it is in the interest of society and the state that the case of any indicted person is investigated in a fair manner. The Constitution guarantees that a person charged with committing a crime will have the right to a public and fair hearing of his/her case (Paragraph 2 of Article 31). Such a person must have the right to defend himself/herself from the charge. If the personal identity data of a witness or a victim are made secret, the implementation of the right of the accused to defence becomes more complex. This means that the norms of criminal procedure laying down the procedure for granting anonymity to witnesses and victims and that for the presentation of their testimony must balance the aforementioned rights.

The Constitutional Court notes that the anonymity of witnesses and victims is permissible only as an exceptional measure in cases where it is necessary to ensure their security and where the procedure for questioning anonymous witnesses and victims in a court hearing and the consideration and use of their evidence neither limit nor deny the constitutional right of an indicted person to defence or a fair investigation of a case.

Requirements for the legal regulation governing criminal proceedings; the constitutional general model of criminal proceedings and exceptions to this model

The Constitutional Court's ruling of 16 January 2006

The obligation of the state, which stems from the Constitution, to ensure the security of each person and all society against criminal attempts implies not only the right and duty of the legislature to define criminal acts and establish criminal responsibility for them by means of laws, but also its right and duty to regulate the relationships connected with the detection and investigation of criminal acts and with the consideration of criminal cases, i.e. its right and duty to regulate criminal procedure relationships. Criminal procedure relationships must be regulated by means of a law in such a way that the legal preconditions would be created in order to speedily detect and thoroughly investigate criminal acts, to punish justly the persons who committed criminal acts (or, on the basis of the law, to decide the issue of their criminal responsibility otherwise), as well as that the legal preconditions would be created in order to ensure that no one who is innocent is punished. It is necessary to seek to ensure the protection of the rights of persons who suffered from criminal acts and to avoid any unreasonable restriction of the rights of persons who committed criminal acts. The legal regulation of criminal proceedings should not create any preconditions for delaying investigations into criminal acts and considering criminal cases, nor should it create any preconditions for participants of criminal proceedings for abusing their procedural or other rights. Otherwise, the constitutional obligations of the state to ensure by means of legal measures the security of each person and all society and the implementation of the legal order based on the constitutional values would become more difficult.

[...]

When regulating, by means of a law, criminal procedure relationships, the legislature has rather broad discretion. For instance, the legislature may establish, by means of a law, different types of criminal proceedings, as well as the particularities of criminal proceedings in the investigation of certain criminal acts and/or in the consideration of the criminal cases of individual categories, *inter alia*, different rules of pretrial investigation of certain criminal acts, the particularities of the legal status of the participants of criminal proceedings, etc.

However, when implementing the said discretion, the legislature must pay regard to the norms and principles of the Constitution, *inter alia*, the provisions of the Constitution ... that consolidate the equality of the rights of persons, the right to apply to a court, the right to a fair and impartial court, the independence

of judges and courts when they administer justice, the duty of a judge to suspend the consideration of a case when he/she applies to the Constitutional Court, as well as the constitutional status of prosecutors.

For instance, as held by the Constitutional Court, the legal regulation of criminal proceedings must be based on the constitutional principles of lawfulness, the equality before the law and the court, the presumption of innocence, public and fair hearings of cases, the impartiality and independence of courts and judges, the separation of the functions of a court and other state institutions (officials) that participate in criminal proceedings, the guarantee of the right to defence, as well as on other principles (rulings of 5 February 1999, 8 May 2000, and 19 September 2000).

When the relationships of criminal procedure are regulated, it is also necessary to pay regard to the fact that the Constitution provides for the institutions of pretrial investigation, the consideration of criminal cases in a court, and upholding charges on behalf of the state in criminal cases. These constitutional institutions imply the following general constitutional model of criminal proceedings: a pretrial investigation and the consideration of a criminal case in a court are different stages in criminal proceedings; during a pretrial investigation, the necessary information is collected and assessed in order to decide whether the pretrial investigation must be continued and whether, after it has been completed, the respective criminal case must be referred to a court; in addition, the said information is collected and assessed in order to consider a case referred to a court and to resolve it in a fair manner; charges on behalf of the state are upheld in the course of considering a case in a court.

As such, the constitutional consolidation of the said general model of criminal proceedings does not eliminate the possibility of regulating criminal procedure relationships in a way that, in certain cases (especially when account is taken of the nature, dangerousness (gravity), scale, other characteristics of criminal acts, and other important circumstances), a pretrial investigation is not conducted and/or charges on behalf the state are not upheld in a court. Thus, the Constitution also does not prevent the legislative consolidation of such types of criminal proceedings that differ more or less from the general constitutional model of criminal proceedings. However, such types of criminal procedure should be treated as exceptions to the general constitutional model of criminal proceedings; their establishment must be constitutionally justifiable.

The right of access to a court in criminal proceedings (i.e. the right of persons to defend their rights in a court if they believe that their rights are violated because of a criminal act) (Paragraph 1 of Article 30 of the Constitution)

The Constitutional Court's ruling of 16 January 2006

... the obligation of the state, which arises from the Constitution, to protect each person and all society against criminal attempts and the right of a person to the due process of law imply the right of each person to defend his/her rights in a court if he/she believes that his/her rights are violated because of a criminal act, as well as the duty of the state to ensure an effective mechanism of implementing this right of a person. The legislature has rather broad discretion in this sphere: the legislature can provide for the grounds according to which an investigation into a criminal act is launched, for the subjects (institutions) that launch an investigation into a criminal act, etc. ... the legislature, while regulating the relationships of criminal procedure and taking account of the nature, dangerousness (gravity), scale, other characteristics of criminal acts, as well as other significant circumstances, may consolidate such a legal regulation where an application (petition, statement, complaint, etc.) from a victim (or his/her representative) concerning a criminal act serves as sufficient grounds for commencing an investigation into such a criminal act. However, by establishing such a legal regulation, the legislature must not create any legal preconditions for denying the state obligation, which arises from the Constitution, *inter alia*, from the principle of a state under the rule of law, to protect each person and all society against criminal attempts, or any legal preconditions for artificially or unreasonably burdening the implementation of the right of a person to defend his/her rights in a court.

... the constitutional right of a person to apply to a court does not mean that the legislature cannot establish in procedural laws, *inter alia*, in the laws that regulate criminal procedure relationships, a certain

procedure for applying to a court and certain formal requirements that must be complied with by applications filed with courts. It also needs to be noted that the constitutional right of a person to apply to a court also does not preclude the legislature from establishing formal requirements applicable to the application of a person subsequent to which an investigation into a criminal act or the consideration of a criminal case in a court can be commenced. As such, the establishment of such formal requirements does not mean that the constitutional right of a person to apply to a court has been artificially restricted or that the implementation of this right has been burdened unreasonably. However, when regulating the procedure for applying to a court and while establishing certain requirements that must be met by an application filed with a court, *inter alia*, the requirements applied to an application to a court subsequent to which an investigation into a criminal act or the consideration of a criminal case in a court is commenced, the legislature may not establish any such a legal regulation whereby the implementation of a certain constitutional right or legitimate interest of a person, *inter alia*, the right of a person to judicial protection, would be burdened unreasonably or its implementation would become impossible altogether. Otherwise, the Constitution would be violated, *inter alia*, the right of a person to judicial protection, as consolidated in Paragraph 1 of Article 30 of the Constitution, the right of a person and society, as stems from the principle of a state under the rule of law, to safety from criminal attempts, and the right of a person to the due process of law, would be infringed.

... under the Constitution, the legislature must regulate, by means of laws, criminal procedure relationships in such a way that the subjects of criminal procedure relationships who believe that their rights have been violated would have the right to defend their rights in a court regardless of their legal status in criminal proceedings. Otherwise, the preconditions would be created for violating the constitutional right of a person to judicial protection, thus, also Paragraph 1 of Article 30 of the Constitution.

In this context, it should also be noted that the legislature, when regulating criminal procedure relationships, may also establish such a legal regulation that would not allow any person to abuse the constitutional right to apply to a court where there are no grounds for such an application.

The powers of a court in criminal proceedings (Paragraph 1 of Article 109 of the Constitution)

The Constitutional Court's ruling of 16 January 2006

Under the Constitution, *inter alia*, Article 109 thereof, and under the principles of a state under the rule of law and justice, in the course of criminal proceedings, a court has the duty to make use of all possibilities in order to establish the objective truth in a criminal case and to adopt a just decision in respect of a person who is accused of committing a criminal act. Such a duty also applies to a court of first instance. The Constitutional Court has held that, in criminal procedure law, the provision of Paragraph 1 of Article 109 of the Constitution, whereby justice is administered only by courts, means that, *inter alia*, during a trial, a court of first instance, when carrying out this function, must thoroughly, fully, and objectively investigate all circumstances of a criminal case and decide the case on its merits (ruling of 5 February 1999).

[...]

... the necessity to protect the rights and legitimate interests of a person, also the fact that a court is a state institution that, when administering justice, helps the state to ensure the security of a person and all society from criminal attempts, determine certain powers of a court in criminal proceedings. In criminal proceedings, a court must be an impartial arbiter, who objectively assesses the data (evidence) in a criminal case regarding the circumstances of committing a criminal act and who adopts a fair decision concerning the guilt of a person accused of having committed the said criminal act; at the same time, in order to establish the objective truth, a court must take an active part in criminal proceedings – a court must define the limits of the consideration of a criminal case, must perform certain procedural actions, must ensure that persons participating in court proceedings do not abuse their rights or powers, and must resolve other issues related to the consideration of a criminal case in a court. While considering a criminal case, a court must act in such a way that the objective truth is established in a criminal case and the question of the guilt of a

person accused of having committed a criminal act is fairly resolved. A court must also be equally just to all persons who participate in criminal proceedings.

Thus, the norms and principles consolidated in the Constitution, *inter alia*, the right of persons to a public and fair hearing of their case by an independent court, as consolidated in Paragraph 2 of Article 31 of the Constitution, as well as the principles of a state under the rule of law and justice, imply the model of a court as an institution administering justice where a court may not be understood as a “passive” observer of court proceedings and where the administration of justice may not depend solely on the material submitted to a court. Seeking to investigate all circumstances of a case objectively and comprehensively and to establish the truth in a case, a court has the powers either to perform procedural actions by itself or to assign certain institutions (officials), *inter alia*, the prosecutors, that they perform such actions.

The necessity, which arises from the Constitution, to follow the principles and norms of criminal procedure law in the course of investigating criminal cases

The Constitutional Court's ruling of 16 January 2006

The constitutional right to a fair trial and to the due court process, when interpreted in the context of other provisions of the Constitution, means that, *inter alia*, during court proceedings, when a criminal case is investigated, the principles and norms of criminal proceedings must be followed (ruling of 10 June 2003).

The necessity, which arises from the Constitution, to follow the principles and norms of criminal procedure law in the course of investigating criminal cases does not mean that it is allowed to disregard other legal norms and principles, which do not belong to the criminal procedure, but which can be significant during the consideration of a certain criminal case. It should especially be emphasised that the duty to pay regard to the principles and norms of criminal procedure law during the consideration of a criminal case may not be interpreted as permitting raising the principles and norms of criminal procedure law or those of criminal proceedings above the principles and norms of the Constitution, or as permitting interpreting the principles and norms of criminal procedure law or those of criminal procedure in such a manner that the meaning of the provisions of the Constitution would be denied, distorted, or ignored, or as permitting opposing the principles and norms of criminal procedure law or those of criminal law, on the one hand, and the general principles of law, on the other hand. In the course of considering criminal cases, regard must be paid to the principles of justice, honesty, reasonableness, proportionality, lawfulness and other general principles of law, as for example *res iudicata*, *nemo iudex in propria causa*, *audiatur et altera pars*, *ubi ius ibi remedium*, *onus probandi*, *impossibilium nulla obligatio est*, etc. Regard must also be paid to the canons of the interpretation of law.

The powers of a court in criminal proceedings to assign the conduct of a pretrial investigation or the performance of separate procedural actions

The Constitutional Court's ruling of 16 January 2006

It has been mentioned that a pretrial investigation and the consideration of a criminal case in a court are different stages in criminal proceedings; that, as such, the constitutional consolidation of the said general model of criminal proceedings does not eliminate the possibility of regulating criminal procedure relationships in a way that, in certain cases (especially when account is taken of the nature, dangerousness (gravity), scale, other characteristics of criminal acts, and other important circumstances), a pretrial investigation is not conducted; that the Constitution also does not prevent the legislative consolidation of such types of criminal proceedings that differ more or less from the general constitutional model of criminal proceedings; however, the establishment of any exceptions to this model must be constitutionally justifiable.

However, it is not permitted to oppose the constitutional general model of criminal procedure, under which a pretrial investigation and the consideration of a criminal case in a court are different stages of criminal proceedings, and such types of criminal proceedings where a pretrial investigation is not conducted. ... it needs to be noted that such legal situations are possible where, during the consideration of

a criminal case in which no pretrial investigation was conducted, the issue of the necessity to conduct a pretrial investigation or to perform certain procedural actions arises.

The obligation of a court, which arises from the Constitution, to establish the objective truth and to solve a case justly implies that, if a court considers that, without a pretrial investigation or certain procedural actions where the conduct of such investigation or the performance of such actions in a court is impossible, it will not be able to examine a criminal case justly or to adopt a just decision (for example, because the information held by the court is insufficient, contradictory, etc.), the court must have the powers to decide that a pretrial investigation must be conducted or separate procedural actions must be performed in the respective case and certain subjects must be given instructions as appropriate; such court instructions must be compulsory to all persons (officials, institutions) to whom they are addressed.

A court decision to assign the conduct of a pretrial investigation and a court decision to assign the performance of separate procedural actions give rise to different legal effects.

In the case where a court decides to assign the conduct of a pretrial investigation, under the Constitution, the respective criminal case must be referred to the prosecutor – the official specified in Article 118 of the Constitution – with the exception of whom, under the Constitution, no one else can organise and direct a pretrial investigation. When organising and/or controlling a pretrial investigation upon the instruction of a court, the prosecutor must ensure that the instruction is carried out properly and on time and he/she acts as an *amicus curiae*. When a court adopts the decision to assign the conduct of a pretrial investigation, the consideration of the criminal case in a court is suspended until the pretrial investigation is over and, if there is the respective decision, until an indictment with the case material is referred to the court.

In the course of interpreting how instructions must be given in cases where a court decides to assign the performance of separate procedural actions (performance of which in a court is impossible), it needs to be noted that, in such a case, the legislature, under the Constitution, has broad discretion: it may establish, *inter alia*, a procedure according to which instructions to perform separate procedural actions are given and the respective institutions (officials) to which such court instructions are given. It needs to be noted that a court may also assign the establishments (officials) of pretrial investigation to perform separate procedural actions; this may not be interpreted as meaning that thereby a court directs a pretrial investigation. A law may also establish such a legal regulation under which a court has the powers to impose the obligation on prosecutors to exercise control over how such court instructions are performed. In cases where a court decides to assign certain officials or institutions to perform separate procedural actions, but not a whole pretrial investigation, the respective criminal case remains in that court.

When regulating the criminal procedure relationships connected with the court powers to give the said instructions, the legislature must pay regard to the Constitution, *inter alia*, the principles of a state under the rule of law, justice, and the separation of powers.

The Constitution, *inter alia*, the principles of a state under the rule of law, justice, and the separation of powers, which are consolidated therein, imply that a court, when giving the said instructions, must act in such a manner that would create no grounds to believe that the court is partial. In this context, it should be underlined that a court, when giving instructions to conduct a pretrial investigation or to perform separate procedural actions (performance of which in a court is impossible), may not indicate how such an instruction must be carried out, or what result is expected, etc.

[...]

Under the Constitution, the legislature must establish such a legal regulation under which it would be possible to ensure that the said instructions of a court (judge) are executed on time and properly.

The powers of a prosecutor to institute criminal proceedings concerning such acts for which persons are held liable only when there is an application filed by a victim (Paragraph 2 of Article 118 (wording of 20 March 2003) of the Constitution)

The Constitutional Court's ruling of 15 June 2006

... the provision of Paragraph 2 of Article 118 of the Constitution, under which, in cases established under the law, prosecutors defend the rights and legitimate interests of the person, society, and the state, gives rise to the duty of the legislature to establish such a legal regulation that a prosecutor could and would have to defend the rights and legitimate interests of persons, society, and the state in reality: in all cases when the rights or legitimate interests of persons, society, or the state are violated, or when attempts are made to violate them, the effective defence and protection of such rights and legitimate interests, *inter alia*, against criminal attempts, must be ensured (ruling of 16 January 2006).

[...]

... the legislature has the discretion to stipulate that for certain criminal acts a person is held liable only in the case where there is an application (request, statement, complaint, etc.) of a victim (or his/her representative) concerning a criminal act, and that, in such cases, a pretrial investigation is not carried out and a prosecutor does not uphold charges on behalf of the state in a court (ruling of 16 January 2006); however, also in such cases, a prosecutor (who, under the Constitution, must, in cases provided for by means of laws, defend the rights and legitimate interests of persons, society, and the state) must, if it is provided for under the law, institute criminal proceedings even if there is no application (request, statement, complaint, etc.) of a victim (or his/her representative) concerning the respective criminal act; the said duty of a prosecutor to institute criminal proceedings is linked with the public importance of the respective act and/or to the fact that this act violated the rights of a person who, due to important reasons, cannot defend his/her rights and legitimate interests. The legislature may also establish, by means of a law, such a legal regulation that, for certain criminal acts, a person is held liable only in cases where there is an application (request, statement, complaint, etc.) of a victim (or his/her representative) concerning a criminal act, but a pretrial investigation is carried out in such a case, and the prosecutor upholds charges on behalf of the state in a court; in such a situation, the legislature may also establish the cases where a prosecutor must institute criminal proceedings, even though there is no application (request, statement, complaint, etc.) of a victim (or his/her representative); such a duty of a prosecutor is also linked with the public importance of the respective criminal act and/or to the fact that this act violated the rights of a person who, due to important reasons, cannot defend his/her rights and legitimate interests.

Summing up, it must be noted that, in all cases where criminal responsibility arises on the grounds of an application (request, statement, complaint, etc.) of a victim (or his/her representative) concerning a criminal act, the institution of a pretrial investigation and/or the emergence of criminal responsibility are linked with the fact how the respective criminal act or damage inflicted by it is assessed by a person whose rights and legitimate interests were violated; it is obvious that there is some subjectivity in such assessment. While the duty of a prosecutor to institute criminal proceedings concerning the said criminal acts (i.e. such acts for which a person is held liable only in cases where there is an application (request, statement, complaint, etc.) of a victim (or his/her representative)), the institution of a pretrial investigation and/or the emergence of criminal responsibility are related to the fact that the respective criminal act is of public importance or that this act violated the rights and legitimate interests of a person who, due to important reasons, cannot defend his/her rights and legitimate interests; even though in some of such cases, the decisions of a prosecutor, based on the assessment of all important circumstances, may depend on various factors, under the Constitution, the prosecutor has no discretion in this field. In this context, it should be emphasised that, as held by the Constitutional Court, the powers of prosecutors as state officials may not be defined in legal acts as their subjective right, which they can implement at their own discretion, i.e. such a right that they may use or may decide not to use; such powers are also duties that prosecutors not only may, but also must carry out if there are conditions for such duties established in laws (ruling of 16 January 2006).

[...]

... it needs to be emphasised that, under Paragraph 2 of Article 118 of the Constitution, prosecutors defend the rights and legitimate interests of persons, society, and the state namely in cases established by law; it has been mentioned that this provision gives rise to the duty of the legislature to establish such a legal regulation that a prosecutor could and would have to defend the rights and legitimate interests of persons, society, and the state in reality. ... the said provision implies such a legal regulation whereby the cases where a prosecutor has the powers to institute criminal proceedings must clearly be defined in the law.

The principle of the equality of persons in criminal procedure law and in criminal law

The Constitutional Court's ruling of 8 June 2009

... when criminal procedure relationships are regulated, regard must be paid to the constitutional principle of the equality of the rights of persons; the constitutional principle of the equality of the rights of persons must be followed in passing laws and in their implementation, as well as in the administration of justice; under the Constitution, the legal regulation must be such that participants in criminal proceedings who have the same procedural status (victims, persons suspected of committing criminal acts, the accused, witnesses, counsel for the defence, etc.) would be treated equally (ruling of 16 January 2006).

In this context, it also needs to be noted that the constitutional principle of the equality of rights must also be respected in cases where a law regulates the questions linked with the subjects of criminal responsibility. At the same time, it also needs to be noted that certain objective differences of subjects of criminal responsibility may also determine a differentiated legal regulation of their criminal responsibility. However, when establishing a differentiated legal regulation, regard must be paid to the norms and principles of the Constitution.

The right of access to a court in criminal proceedings (Paragraph 1 of Article 30 of the Constitution)

The Constitutional Court's ruling of 7 April 2011

Under the Constitution, *inter alia*, Paragraph 1 of Article 30 thereof, in regulating criminal procedure relationships, the constitutional right of a person to apply to a court may not be violated in any respect; the legislature must, by means of law, regulate criminal procedure relationships in such a way that the subjects of criminal procedure relationships who believe that their rights are violated would have the right to defend their rights in a court regardless of their legal status in criminal proceedings; the legislature, when regulating criminal procedure relations, may also establish such a legal regulation that would not allow any person to abuse the constitutional right to apply to a court where there are no grounds for such an application (ruling of 16 January 2006).

... the legislature may establish various models for consideration of the complaints of persons participating at the stage of a pretrial investigation, *inter alia*, the ones who have suffered from a criminal act, or complaints regarding the actions or decisions of a prosecutor; however, the established legal regulation may not deny the constitutional right of such persons to apply to a court, *inter alia*, regarding the violation of their rights during a pretrial investigation. Under Paragraph 1 of Article 30 of the Constitution, a law must provide for the right of persons participating at the stage of a pretrial investigation, *inter alia*, the ones who have suffered from a criminal act, to file a complaint against the procedural actions and decisions of a prosecutor, *inter alia*, the refusal to institute a pretrial investigation in cases where such a refusal violates their rights.

It also needs to be noted that, under Paragraph 1 of Article 30 of the Constitution, when regulating the possibility for persons participating at the stage of pretrial investigation, *inter alia*, the ones who have suffered from a criminal act, to file a complaint against the actions and decisions relating to a pretrial investigation in criminal proceedings, the legislature may establish such a procedure under which it would be possible to file, with a higher court, a complaint against a court decision regarding the ruling of a

prosecutor to refuse to institute a pretrial investigation. In doing so, the legislature must pay regard to the norms and principles of the Constitution.

A legal regulation governing procedural coercive measures applicable in criminal proceedings

The Constitutional Court's ruling of 17 February 2016

... under the Constitution, implementing the duty of the state to ensure that every person and all society are protected from criminal attempts and taking account of its own obligation to regulate relationships in criminal proceedings, the legislature must, by means of a law, provide for such procedural coercive measures applicable in criminal proceedings that would enable the speedy disclosure and thorough investigation of criminal acts and would prevent new criminal acts. The law must establish such a procedure for applying the said measures that would ensure the protection of the rights of a person against whom such measures are applied, *inter alia*, that would create the preconditions for that person to defend his/her rights in a court in cases where his/her rights have been violated as a result of the application of these measures.

[...]

... when a procedure governing the application of procedural coercive measures in criminal proceedings is established in a law, regard must also be paid to the constitutional principle of proportionality: these measures must be applied only where they are aimed at the speedy disclosure and thorough investigation of criminal acts, or at preventing new criminal acts; such measures must be necessary to reach the aforesaid objectives and must not restrict the rights or freedoms of a person against whom the said measures are applied clearly more than necessary in order to reach the said objectives.

[...]

... the Constitution, *inter alia*, the constitutional principle of a state under the rule of law, gives rise to the right of a person to the due and fair process of law in criminal proceedings; the said right implies, among other things, an active role of the subjects authorised to adopt decisions on procedural coercive measures applicable in criminal proceedings, *inter alia*, an active role of a court as an institution administering justice, in ensuring the protection of the rights of a person against whom the said measures are applied in criminal proceedings.

4. THE STATE AND ITS INSTITUTIONS

4.1. THE CONCEPT AND MISSION OF THE STATE

The concept and mission of the state

The Constitutional Court's ruling of 13 December 2004

The state is the organisation of all society (rulings of 25 November 2002, 4 March 2003, 30 September 2003, 3 December 2003, and 30 December 2003). The state, whose power covers all its territory, is the political organisation of all society; the mission of the state is to ensure human rights and freedoms and to guarantee the public interest (ruling of 30 December 2003). The imperative of social harmony is consolidated in the Constitution (rulings of 14 January 2002, 3 December 2003, and 5 March 2004). The state, when carrying out its functions, must act in the interests of all society (ruling of 4 March 2003). In order to guarantee the public interest of the entire national community – the civil Nation, the state must ensure that public administration is carried out and that public services are provided.

The performance of state functions

The Constitutional Court's ruling of 13 December 2004

The state performs its functions through the system of particular establishments, which comprise, first of all, state institutions; the state may also perform its functions to a certain extent through other (non-state) institutions, which are assigned (entrusted) according to laws with performing particular state functions, or which participate in performing state functions in particular forms and manner defined in laws. When stipulating, by means of a law, that particular functions to a certain extent may be performed not through the state, but other institutions, it is necessary to pay regard to the principles and norms of the Constitution.

The mission of the state to guarantee the public interest

The Constitutional Court's ruling of 21 September 2006

The Constitution consolidates the state as the common good of all society (rulings of 25 May 2004 and 19 August 2006). The mission of the state as a political organisation of all society is to ensure human rights and freedoms and to guarantee the public interest (rulings of 30 December 2003, 13 December 2004, 29 December 2004, and 16 January 2006). Each public interest may only be based on the fundamental social values that are consolidated, protected, and defended by the Constitution; the consolidation and guarantee, as well as the defence and protection, of such an interest are constitutionally reasoned. It has been held in the jurisprudence of the Constitutional Court that the implementation of the public interest, as an interest of society, which is recognised by the state and is protected by law, is one of the most important conditions of the existence and evolution of society itself (rulings of 6 May 1997 and 13 May 2005). On the other hand, the public interest, as a common interest of the state, all society or part of society, must be balanced with autonomous interests of individuals, because not only the public interest, but also the rights of persons are constitutional values (rulings of 6 May 1997 and 13 December 2004). These values – the protection and defence of the rights and legitimate interests of persons, and the public interest – which are consolidated in the Constitution, may not be opposed. A just balance must be ensured in this sphere.

At the same time, it needs to be noted that not any legitimate interest of a person or a group of persons should be regarded as a public interest, but only such that reflects and expresses the fundamental values consolidated, protected, and defended by the Constitution; these are, *inter alia*, the openness and harmony of society, the rights and freedoms of a person, the rule of law, etc. It is such an interest of society or part

thereof that must be ensured and served by the state when it performs its functions, *inter alia*, such an interest must be ensured and served through courts, which decide cases under their competence.

Thus, every time when the question arises whether a certain interest should be considered a public one, it must be possible to reason that, without satisfying a certain interest of a person or a group of persons, certain values consolidated, protected, and defended by the Constitution would be violated. In situations where a decision on whether a certain interest has to be considered public and defended and protected as a public interest must be adopted by a court that considers a case, and it is necessary to reason such a decision in the respective court act. Otherwise, there would arise a reasonable doubt that what is protected and defended by a court as a public interest actually is not a public, but a private interest of a certain person.

It should be emphasised that the public interest is dynamic and subject to change (ruling of 8 July 2005). On the other hand, it is a very varied one. In fact, it is impossible to say *a priori* in which areas of life, concerning which legal disputes may arise or wherein the need may arise to apply law, threats for the public interest may occur or the need may arise to ensure the public interest by means of interference by public power institutions or officials.

The *raison d'être* of the state

The Constitutional Court's ruling of 24 September 2009

The Constitutional Court has held on more than one occasion that the state is the organisation of all society (rulings of 25 November 2002, 4 March 2003, 30 September 2003, 3 December 2003, and 30 December 2003). In its acts, the Constitutional Court has also held that: having adopted by referendum the Constitution, the highest-ranking legal act, the Lithuanian Nation formed the standardised basis for the common life of its own, as the national community – the civil Nation, and consolidated the state as the common good of all society; the Constitution is based on universal, unquestionable values, *inter alia*, respect for law and the rule of law, a limitation on the scope of powers, the duty of state institutions to serve the people and their responsibility for society, justice, striving for an open, just, and harmonious society and a state under the rule of law, as well as the recognition of and respect for human rights and freedoms (rulings of 25 May 2004 and 19 August 2006). In the Constitutional Court's ruling of 19 August 2006, it was also held that one of the most important obligations of a democratic state based on law and justice is to respect, defend, and protect the values, as well as human rights and freedoms, upon which the Constitution itself adopted by the Nation is based and whose actual consolidation, defence and protection is the *raison d'être* of the state itself; otherwise, it would not be possible to regard the state as the common good of all society.

4.2. STATE INSTITUTIONS

State institutions and their system

The Constitutional Court's ruling of 13 December 2004

The system of state institutions comprises very diverse state institutions. The diversity of state institutions, their legal status and powers are determined by a variety of functions performed by the state, the particularities of managing the general affairs of society, the organisational and financial capacity of the state, the content and expediency of the policy implemented during a concrete period of life of society and the development of the state, international obligations of the state, as well as other factors. The Seimas, which has the constitutional powers to establish and liquidate state institutions, as well as to establish their legal status and powers, is bound by the Constitution.

It is worth emphasising that the notion “state institutions” is employed in the Constitution (Article 8, Paragraph 1 of Article 29, Paragraph 1 of Article 61, Item 5 of Article 67, and Paragraph 1 of Article 104 of the Constitution). The Constitution also mentions “institutions of control” (Paragraph 3 of Article 73 of the Constitution), a “special institution of judges, as provided for by law”, which advises the President of the Republic on the appointment, promotion, and transfer of judges or their release from duties (Paragraph 5 of Article 112 of the Constitution), “institutions of state power and governance” (Paragraph 1 of

Article 114 of the Constitution), and “self-government institutions” (Paragraph 3 of Article 119 of the Constitution). In the Constitution, the notion “institution” also has a broader meaning: it also denotes the name of non-governmental institutions in regard to which particular restrictions, similar to those *expressis verbis* established in regard to the state and/or its institutions (Paragraph 2 of Article 44 and Paragraph 4 of Article 89 of the Constitution), are established in the Constitution.

When systematically interpreting the aforementioned formulations of the Constitution, it is obvious that the notion “state institutions” is of a general type and it comprises various state institutions through which the state performs its functions. It has been mentioned that state institutions comprise a system. This system of state institutions is consolidated in legal acts of diverse legal force. Some state institutions are *expressis verbis* specified in the Constitution. Other state institutions, according to the Constitution, must be established by means of a law. The need to establish any other state institutions originates from the necessity to implement state governance, to administer national affairs, and to ensure the performance of various state functions – state institutions must be organised in order to perform such functions, although their establishment is not explicitly provided for in the Constitution.

Various state institutions are *expressis verbis* specified in the Constitution: the Seimas; the President of the Republic; the Government; the Constitutional Court; the Supreme Court, the Court of Appeal, regional and district courts; Seimas Ombudsmen; the National Audit Office; the Bank of Lithuania; the State Defence Council; the Commander of the Armed Forces; the Office of the Prosecutor General; the Central Electoral Commission. Some state institutions are consolidated in the Constitution without specifying their exact names: ministries; security service; a special institution of judges, as provided for by law, which advises the President of the Republic on the appointment, promotion, and transfer of judges or their release from duties; territorial prosecutor’s offices; the representatives of the Government, who supervise whether municipalities observe the Constitution and laws and whether they execute government decisions. The institutions that may be founded by means of laws adopted by the Seimas are also provided for in the Constitution: institutions of control; establishments of the Government; specialised courts established for the consideration of administrative, labour, family, and cases of other categories.

The institutions executing state power (Paragraph 1 of Article 5 of the Constitution)

The Constitutional Court’s ruling of 13 December 2004

Some state institutions are treated in the Constitution as state institutions that execute state power. They are specified in Paragraph 1 of Article 5 of the Constitution, which states that, in Lithuania, state power is executed by the Seimas, the President of the Republic and the Government, and the judiciary. The relations between the Seimas (executing legislative power), the President of the Republic and the Government (institutions of executive power), and the judiciary (executing judicial power) are based on the constitutional principle of the separation of powers.

The Seimas, the representation of the Nation, executes legislative power and is the only legislative institution in Lithuania. The Constitution directly provides that the Seimas has the powers to establish certain state institutions by law. According to Item 5 of Article 67 of the Constitution, the Seimas establishes state institutions provided for by law, and appoints and releases their heads. When interpreting the legal regulation established in Article 67 of the Constitution, the Constitutional Court has held that the said item means, *inter alia*, that the Seimas has the powers to provide in a law for the state institutions the heads of which are appointed and released by the Seimas itself, and that the Seimas has the powers to appoint and release the heads of such institutions (ruling of 24 January 2003).

The foundations of the system of the institutions of executive power, as well as the powers of the supreme institutions of executive power, are established in the Constitution. The constitutional order of the State of Lithuania is based on the model of dual executive power: the executive power in Lithuania is exercised by the President of the Republic – the Head of State and by the Government.

The President of the Republic is part of executive power (rulings of 10 January 1998, 21 December 1999, and 30 December 2003). Article 77 of the Constitution provides that the President of the Republic is the Head of State (Paragraph 1); he/she represents the State of Lithuania and performs

everything with which he/she is charged by the Constitution and laws (Paragraph 2). The President of the Republic, implementing the powers vested in him/her, issues acts-decrees (Article 85 of the Constitution). It should be emphasised that, under Item 2 of Article 94 of the Constitution, the Government executes, *inter alia*, the decrees of the President of the Republic.

The Government is a collegial institution of executive power (ruling of 10 January 1998). Article 91 of the Constitution provides that the Government of the Republic of Lithuania consists of the Prime Minister and ministers; under Paragraph 1 of Article 98 of the Constitution, ministers, *inter alia*, head their respective ministry. According to Item 3 of Article 94 of the Constitution, the Government coordinates the activities of the ministries and other establishments of the Government. The Constitution specifies only one position of a minister – the Minister of National Defence (Paragraph 1 of Article 140 of the Constitution); therefore, according to the Constitution, the Ministry of National Defence may not be absent in Lithuania. When interpreting the legal regulation established in Item 3 of Article 94 of the Constitution, in its ruling of 23 November 1999, the Constitutional Court held that the Constitution does not reveal what establishments are considered “establishments of the Government”; moreover, the Constitution does not specify what legal status of the aforementioned government establishments is. It is the legislature exercising the discretion in this area (limited by the Constitution) that must establish this. On the other hand, certain government institutions are specified in the Constitution; for example, the institution of the representative of the Government, which has the power to supervise whether municipalities observe the Constitution and laws, and whether they execute the decisions of the Government, is consolidated in Paragraphs 2 and 3 of Article 123 of the Constitution. In this context, it should also be mentioned that Paragraph 1 of Article 123 of the Constitution provides that, at higher-level administrative units, governance is organised by the Government according to the procedure established by law; thus, the legislature has the duty not only to establish higher-level administrative units, but also to provide for the government institutions through which the Government would organise governance at higher-level administrative units.

It should be mentioned that the powers of the President of the Republic and those of the Government, as two branches of dual executive power, are autonomous and independent of each other. On the other hand, the Constitution *expressis verbis* specifies such powers of the President of the Republic and those of the Government that should be jointly implemented by the President of the Republic and the Government. For instance, Article 85 of the Constitution, *inter alia*, prescribes: “To be valid, the decrees issued by the President of the Republic for the purposes specified in Items 3, 15, 17, and 21 of Article 84 of the Constitution must be signed by the Prime Minister or an appropriate Minister.” According to Item 1 of Article 84 of the Constitution, the President of the Republic, *inter alia*, together with the Government, conducts foreign policy. It should also be noted that, while paying regard to the Constitution, a law may also provide for such a legal regulation that certain state institutions would be established under the President of the Republic, the Head of State.

Judicial power is executed by courts. In the Republic of Lithuania, the implementation of justice is within the competence of judicial power.

Paragraph 1 of Article 102 of the Constitution stipulates that the Constitutional Court decides whether the laws and other acts of the Seimas are in conflict with the Constitution and whether the acts of the President of the Republic and the Government are in conflict with the Constitution and laws. The Constitutional Court ensures the supremacy of the Constitution in the legal system and administers constitutional justice.

Paragraph 1 of Article 111 of the Constitution states that the courts of the Republic of Lithuania are the Supreme Court of Lithuania, the Court of Appeal of Lithuania, regional courts, and district courts. These courts constitute the system of courts of general jurisdiction.

Paragraph 2 of Article 111 of the Constitution provides that, for the consideration of administrative, labour, family, and cases of other categories, specialised courts may be established.

In its rulings, the Constitutional Court has on more than one occasion emphasised the independence of judicial power from legislative power and executive power; it has also stressed the fact that judicial power is a fully fledged branch of state power.

State institutions not categorised as belonging to legislative power, executive power, or judicial power

The Constitutional Court's ruling of 13 December 2004

Other state institutions that do not belong to the legislative, executive, or judicial branches, under Paragraph 1 of Article 5 of the Constitution, are also specified in the Constitution.

For instance, under the Constitution, such institutions and/or officials are the Seimas Ombudsmen (Paragraph 1 of Article 73), the Office of the Prosecutor General and territorial prosecutor's offices (Article 118), the National Audit Office (Chapter XII), the Bank of Lithuania (Articles 125 and 126), the Security Service (Item 14 of Article 84), the Commander of the Armed Forces (Item 14 of Article 84 and Paragraphs 1 and 3 of Article 140), and the Central Electoral Commission (Item 13 of Article 67).

Item 5 of Article 67 of the Constitution provides that the Seimas establishes state institutions provided for by law and appoints their heads; Paragraph 1 of Article 94 provides that the Government manages national affairs; Paragraph 1 of Article 123 provides that, at higher-level administrative units, governance is organised by the Government according to the procedure established by law.

Therefore, the Seimas, as well as, according to laws, the Government, has the powers to establish such state institutions that are not *expressis verbis* specified in the Constitution where the need for establishing which arises from the necessity to implement state governance, to manage national affairs, and to ensure the performance of various state functions.

The system of institutions performing state functions

The Constitutional Court's ruling of 13 December 2004

The functions of the state as the organisation of all society, where the state has to act in the interests of all society in a way that ensures social harmony, are interrelated; they comprise a single system and may not be opposed. Therefore, state institutions through which the said functions are performed may not be opposed, either.

It is also worth noting that it is not allowed to create opposition between state institutions and such other (non-state) institutions that, according to laws and paying regard to the Constitution, are assigned to perform (entrusted with performing) particular state functions or participate in the performance of state functions in certain forms and manner defined in laws, i.e. they carry out public administration and/or provide public services. Since they are institutions that carry out public administration and/or provide public services and, thus, guarantee the public interest, they comprise a single system. ... both state and municipal institutions – the two systems of public power that are established in the Constitution and, as mentioned before, each of them performs characteristic functions, but still are related to each other – belong to this system. According to the Constitution, it is necessary to establish such a legal regulation that would ensure systemic correlation and interaction among institutions carrying out public administration and/or providing public services and, thus, guaranteeing the public interest, where the said interaction would include, *inter alia*, the rational proportion of their competence, efficiency, professional skills, the transfer of knowledge, skills, and experience of persons employed in the said institutions, as well as the continuity of the said activity when performing state functions and guaranteeing the public interest.

The differentiation of institutions performing state functions (civil and military institutions)

The Constitutional Court's ruling of 13 December 2004

Interconnections among state institutions, as well as interaction between state institutions and municipal institutions, do not deny their specific characteristics. The content of each state function and circumstances of performing such functions lead to the situation that state institutions performing these functions differ in terms of their status and character of their activity.

Some functions of the state are fulfilled, primarily or mainly, through civil state (and municipal) institutions, whereas others are performed through military and/or paramilitary state institutions. In its ruling of 24 December 2002, the Constitutional Court held that, under the Constitution, civil service is

regarded as separate from military service, paramilitary service, or security service. The Constitution consolidates a differentiated concept of civil state institutions and military state institutions. The said concept creates the legal preconditions for establishing, by means of legal acts, a differentiated regulation of relationships connected with the activities of civil state institutions and military and paramilitary state institutions, as well as for establishing such a legal status of persons working in civil, military, or paramilitary state institutions that is distinguished by certain particularities.

[...]

The constitutional requirement that state power in Lithuania must be organised in a democratic manner and that a democratic political regime must be in place in the country, the constitutional imperative of an open, just, and harmonious civil society, the constitutional principle of responsible governance, and other provisions of the Constitution mean that military and paramilitary state institutions may not have priority over civil state institutions, that decisions made by military and paramilitary institutions and their officials must be based on decisions adopted by civil state institutions, and that military state institutions must be accountable to civil state institutions and must be controlled by civil state institutions. Democratic civil control over military and paramilitary state institutions (including the armed forces) is a necessary precondition for civil democratic governance, thus, also that for a state under the rule of law.

Persons working at institutions that perform state functions (state officials who perform their functions in implementing state power and state servants)

The Constitutional Court's ruling of 13 December 2004

State and municipal institutions are in charge of public administration and/or provide public services through persons who are employed in such institutions and adopt the respective decisions. ... the Constitution consolidates a different status of persons employed in the institutions through which state functions are performed.

Some persons – members of the Seimas, the President of the Republic, members of the Government, and judges – perform their functions when executing state power; they perform these functions independently; for this purpose, respective powers, which may be exercised only by the said persons and nobody else, are established for them in the Constitution and laws. Members of municipal councils perform their functions when implementing the self-government right of territorial communities – under the powers established for them by law, members of municipal councils implement the functions of self-government independently. The fact that other persons employed in the institutions through which state functions are performed render assistance to the said persons, provide them with support in another way, or provide them with services needed in their activity, does not mean that these other persons perform any functions when executing state power.

... the institutions executing state power are listed in Paragraph 1 of Article 5 of the Constitution – they are the Seimas, the President of the Republic and the Government, and the judiciary. The Constitutional Court has held in its rulings that, where state officials perform their functions while observing the Constitution and law and acting in the interests of the Nation and the State of Lithuania, they must be protected against any pressure and unjustified interference with their activities, and, where they conscientiously perform their duties, they must not be subject to any threats directed against their person, rights, or freedoms (rulings of 25 May 2004 and 1 July 2004). In order that they might be able to perform the functions prescribed for them in the Constitution in the course of implementing state power, the Constitution provides for a special legal status for the President of the Republic, the members of the Seimas, the members of the Government, and judges, which, *inter alia*, includes the limitations on work, remuneration, and political activities, as well as a special procedure for removal from office or for the revocation of a mandate and/or immunities, i.e. the inviolability of the person and the special procedure for applying criminal and/or administrative responsibility (ruling of 24 December 2002). Under the Constitution, no other persons employed in the institutions through which state functions are performed enjoy the aforementioned immunities. On the other hand, a special – constitutional – responsibility is established in the Constitution for the majority of the said state officials. The state officials who perform

their functions in executing state power also differ in this regard from all other persons employed at the institutions through which state functions are performed.

The other persons employed at the institutions through which state functions are performed constitute the body of state servants. State service is a professional activity of these persons; the said activity is related to guaranteeing the public interest.

The principle of responsible governance

The Constitutional Court's conclusion of 10 November 2012

The principle of responsible governance, as consolidated in the Constitution, implies that all state institutions and officials ... are obliged to follow the Constitution and law while performing their functions and must properly implement the powers granted to them by the Constitution and laws by acting in the interests of the Nation and the State of Lithuania (conclusion of 26 October 2012).

4.3. STATE SERVICE

State servants

The Constitutional Court's ruling of 13 December 2004

State and municipal institutions are in charge of public administration and/or provide public services through persons who are employed in such institutions and adopt the respective decisions. ... the Constitution consolidates a different status of persons employed in the institutions through which state functions are performed.

Some persons – members of the Seimas, the President of the Republic, members of the Government, and judges – perform their functions when executing state power ... Members of municipal councils perform their functions when implementing the self-government right of territorial communities

[...]

The other persons employed at the institutions through which state functions are performed constitute the body of state servants. State service is a professional activity of these persons; the said activity is related to guaranteeing the public interest. In terms of content, the notion “state service”, which is employed in the Constitution, is identical to the notion “public service”. The Constitution consolidates such a concept of state service that is inseparably linked with the mission of the state as the organisation of all society to ensure human rights and freedoms and to guarantee the public interest. Professional state servants adopt decisions when carrying out public administration and/or providing public services (or participate in drafting and executing these decisions, coordinating and/or controlling the implementation thereof, etc.); however, they (unlike the members of the Seimas, the President of the Republic, the members of the Government, or judges) do not perform any functions when implementing state power and, under the Constitution, they may not have such powers. Thus, the notion “state service” employed in the Constitution does not include the office of a member of the Seimas, the President of the Republic, the Prime Minister or a minister, or that of a judge.

In this context, it should be held that the notion “state service” does not include members of municipal councils, i.e. local authority institutions, either.

The professional activity of state servants must be remunerated from the state (municipal) budget.

In this context, it is worth mentioning that the Constitution does not provide any preconditions for treating in legal acts all persons who are employed at state or municipal institutions and whose activity is remunerated from the state (municipal) budget as state servants only on the basis of the fact that they are employed at the aforementioned institutions or that their activity is remunerated from the state (municipal) budget. Only such persons may be considered state servants who are employed at state or municipal institutions and who adopt decisions when carrying out public administration and/or providing public services (or participate in drafting and executing such decisions, coordinating and/or controlling the execution thereof, etc.).

It should also be noted that, under the Constitution, such activity where persons participate in performing state (or municipal) functions when not being employed at state or municipal institutions may not be considered state service, either.

Laws and other legal acts must establish such a legal status of state servants that would be in line with the constitutional concept of state service as a special system of professional activity (remunerated from state (municipal) budget) when adopting decisions in the area of public administration and/or providing public services (or participation in drafting and executing such decisions, coordinating and/or controlling the execution thereof, etc.). The said concept implies, *inter alia*, the internal mobility of state service as a system, the transfer of knowledge, skills, and experience of persons employed in the said institutions, as well as the continuity of the said activity when performing state functions and guaranteeing the public interest.

The constitutional concept of state service

The Constitutional Court's ruling of 13 December 2004

The legislature has broad discretion in choosing and consolidating in laws a certain model of organising state service. However, it should be stressed that, when regulating the relationships of state service, the legislature is bound by the constitutional concept of state service and must pay regard to the norms and principles of the Constitution. According to their competence, other law-making subjects must also have regard to the constitutional concept of state service when regulating the relationships of state service.

The Constitution mentions state service *expressis verbis* exclusively in Paragraph 1 of Article 33 of the Constitution, which provides that citizens have the right to participate in the governance of their state both directly and through their democratically elected representatives, as well as the right to enter on equal terms the state service of the Republic of Lithuania, and in Article 141 of the Constitution, which provides that persons performing actual military service or alternative service, as well as the officers of the national defence system, the police, and the interior, non-commissioned officers, re-enlistees, and other paid officials of paramilitary and security services who are not retired to the reserve, may not be members of the Seimas or members of municipal councils, and may not hold any elective or appointive office in civil state service, or participate in the activities of political parties or organisations.

State service is a professional activity of state servants; the said activity is related to guaranteeing the public interest. The fact that the mission of state service is to guarantee, when state and municipal institutions are in charge of public administration and provide public services, the public interest rather than private interests of the employees engaged in this activity, determines a special procedure of forming the body of state servants, the specifics of their legal status, and their special responsibility to the public for performing the functions commissioned to them.

The legal relationships of state service are legal relationships between a state servant and the state, which acts as the employer of the said person. Still, despite similarities, the legal relationships of state service are not identical to such employment relationships that arise between an employee who is not a state servant and his/her employer (irrespective of whether such relationships arise in state institutions, municipal institutions, or other enterprises, establishments, and organisations). Their legal statuses are different.

Requirements for state service

The Constitutional Court's ruling of 13 December 2004

The constitutional principle of a state under the rule of law, the constitutional imperatives of justice and social harmony, the striving for civil society, the constitutional principle of responsible governance, as well as the principles consolidated in the Constitution, such as the principles that the State of Lithuania is an independent democratic republic, that the State of Lithuania is created by the Nation, that the sovereignty belongs to the Nation, that the scope of powers is limited by the Constitution, and that state institutions serve the people, the recognition of the innate nature of human rights and freedoms, as well as other

constitutional imperatives, imply various constitutional requirements for state service as a system, which comprises the professional activity of persons employed at state or municipal institutions when adopting decisions in the course of carrying out public administration and/or providing public services (or participating in drafting and executing such decisions, coordinating and/or controlling the execution thereof, etc.) and thus guaranteeing the public interest in the entire state.

Requirements for state service: the uniformity of the system of state service

The Constitutional Court's ruling of 13 December 2004

Since the constitutional concept of state service as a system, where such a system comprises the professional activity of persons employed at state or municipal institutions when adopting decisions in carrying out public administration and/or providing public services (or participating in drafting and executing such decisions, coordinating and/or controlling the execution thereof, etc.) and, thus, ensuring the public interest in the entire state, implies the necessity to establish such a legal regulation that would ensure systemic correlations and interaction among all aforementioned institutions, where such interaction includes, *inter alia*, the transfer of knowledge, skills, and experience of persons employed in the said institutions, as well as the continuity of the said activity when performing state functions and ensuring the public interest; therefore, under the Constitution, the system of state service, which is consolidated in laws and other legal acts, must be of a uniform type. Thus, one of the elements of the constitutional concept of state service and, at the same time, one of the requirements that must be observed when organising state service and regulating the relationships of state service is the uniformity of the system of state service. Taking account of the variety of state functions, which are implemented through particular institutions, the uniformity of the system of state service does not deny the possibility of regulating certain relationships of state service in a differentiated manner.

The chosen model of the system of state service, as well as the foundations of its organisation and functioning, must be established by means of a law.

It is worth noting that “municipal service” is not separately mentioned in the Constitution. The constitutional concept of state service comprises relationships not only at state institutions, but also at municipal institutions; in this ruling of the Constitutional Court, it has been held that the notion “state service”, which is employed in the Constitution, is identical to the notion “public service”. The uniform system of state service is a necessary precondition for the effective interaction between state governance and local self-government, as the two systems of public power, and a necessary precondition for not leading to a clash of, but for ensuring the compatibility of, the public interest of the entire national community – the civil Nation and the public interest of territorial communities and municipalities.

It is also worth noting that only the uniform system of state service ensures its internal mobility and the possibility of the expedient arrangement of human and other resources necessary for performing certain state functions or solving other issues, which occur in the state.

The uniformity of the system of state service, comprising service at both state and municipal institutions, is an important condition of the uninterrupted and continued functioning of the system of state service. The Constitutional Court has held that, under the Constitution, there may not be any such legal situations where a certain institution exercising state power fails to function (ruling of 1 July 2004). The same can also be said about other state and municipal institutions through which state functions are performed. Thus, all state and municipal institutions must act without interruptions. This means that the functioning of state service as a system must also be continuous in order to carry out public administration constantly and effectively and to provide public services in the entire state by guaranteeing the public interest.

Requirements for state service: the possibility of a differentiated regulation

The Constitutional Court's ruling of 13 December 2004

... the uniformity of the system of state service does not deny the possibility of regulating certain relationships of state service in a differentiated manner. Such differentiation is possible in view of the fact

that, under the Constitution, it is necessary to ensure an effective performance of state functions and to guarantee the public interest. A differentiated legal regulation of the relationships of state service is based on the particularities of state (municipal) institutions and the functions performed by them, the place of the said institutions in the system of all institutions through which state functions are performed, the powers established for them, the professional skills necessary for certain state servants, as well as on other important factors.

For instance ... a differentiated concept of state civil institutions, as well as of state military and paramilitary institutions, is consolidated in the Constitution, and ... this fact creates the legal preconditions for establishing, by means of legal acts, a differentiated regulation of the relationships connected with the activities of civil state institutions and military and paramilitary state institutions, as well as for establishing such a legal status of persons working in civil and military and paramilitary state institutions that is distinguished by certain particularities.

State service relationships may also be regulated in a differentiated manner in view of the fact whether such service is service at state or municipal institutions, and whether particular state institutions, under the Constitution, are categorised as belonging to the legislative, executive, or judicial branches or to none of them. Various criteria may serve as the grounds for a differentiated regulation of state service relationships: state functions performed through a particular state (municipal) institution, the competence of an institution, the scope of activity, the size of an institution, the territory covered by the activity thereof, etc.

The grounds for differentiating a legal regulation of state service relationships may also be the fact that state service as a system is organised on the basis of, *inter alia*, the principles of hierarchy and accountability. The establishment of a hierarchy or other classification, grouping into categories, etc. of positions of state servants must be unified and based on the same criteria; it is not allowed that individual state institutions or individual branches of state power establish each for itself a separate system of categories (classification) of positions of state servants where such a system is not based on criteria that are established by law and are common to entire state service. When establishing such a uniform system, it is essential to pay regard to the principle of the separation of powers, which implies, *inter alia*, that all the branches of state power – legislative, executive, and judicial – are equal in their state status. Concrete positions of state servants may be assigned to a certain category (type) only according to this uniform system; however, this must be done when paying regard to the particularities of each institution and each position, particular functions performed and responsibility taken by state servants, as well as to other factors.

Still, it should be stressed that, under the Constitution, it is not permitted to create such a legal regulation according to which state service at certain state (municipal) institutions (a certain level of the system of state service) would be eliminated from the general system of state service, or such a legal regulation that would consolidate a privileged status of state servants of certain institutions, or vice versa, their discrimination in regard to state servants of analogous institutions. For instance, in its ruling of 2 July 2002, the Constitutional Court held that “the relationships of the organisation of the national defence system and military service have their particularities” and that “taking account of these particularities, it is permitted to establish, by means of a law, various ways of resolving disputes over violations of rights and freedoms, including a prelitigation procedure for settling such disputes”; however, “the particularities of the relationships of the organisation of the national defence system and military service may not deny the constitutional right of persons to apply to a court to defend their rights and freedoms”.

Requirements for state service: loyalty to the State of Lithuania and its constitutional order

The Constitutional Court's ruling of 13 December 2004

Under the Constitution, state service is service to the State of Lithuania and the civil Nation; therefore, state service should be loyal to the State of Lithuania and its constitutional order. It must be organised in such a way that only the people who are loyal to the State of Lithuania and its constitutional order adopt decisions when carrying out public administration and providing public service (or participate in drafting and executing these decisions, coordinating and/or controlling the execution thereof, etc.) at state or

municipal institutions. The Constitution does not tolerate such situations where a certain level of the system of state service, a certain state or municipal institution, or individual state servants acts contrary to the interests of the State of Lithuania or violates the constitutional order of the State of Lithuania.

It should be noted that the constitutional imperative of the loyalty of state service to the State of Lithuania also gives rise to special requirements. State servants not only must not violate the Constitution and laws themselves, but also bear the duty to take all necessary positive actions when protecting the constitutional order of the State of Lithuania. In this context, it should be noted that Paragraph 2 of Article 3 of the Constitution provides that the Nation and each citizen have the right to resist anyone who encroaches on the independence, territorial integrity, and constitutional order of the State of Lithuania by force; Article 8 of the Constitution prescribes that the seizure of state power or state institutions by force is considered anti-constitutional actions, which are unlawful and invalid; Paragraph 1 of Article 139 of the Constitution stipulates that the defence of the State of Lithuania against a foreign armed attack is the right and duty of each citizen of the Republic of Lithuania. In its ruling of 23 November 1999, the Constitutional Court held the following: “The constitutional order of the Republic of Lithuania is based on the priority of the rights and freedoms of individuals and citizens as the ultimate value, as well as on the principles establishing the sovereignty of the Nation, the independence and territorial integrity of the state, democracy, the republic as the form of government, the separation of powers, their independence and balance, local self-government, etc. The protection of the constitutional order means that it is not permitted that the social, economic, and political relationships established in the Constitution, which constitute the foundations of the life of individuals, society, and the state, be encroached upon.” In the said Constitutional Court’s ruling, it was also held that “the Constitution does not establish the function of protecting the constitutional order for a single institution of state power. This is a constitutional obligation of all the institutions of state power (Seimas, the President of the Republic, the Government, the judiciary) and other state establishments and organisations. This obligation derives not only from particular laws, but also from the principle of a state under the rule of law, which is established in the Constitution, and the requirement that the Constitution must be followed, enforced, not violated, and protected. Of course, every state institution protects the constitutional order only by means of the forms of the activity characteristic of it and only on the grounds of the powers granted to it by the Constitution and laws.”

Requirements for state service: to obey the Constitution and law

The Constitutional Court’s ruling of 13 December 2004

State service must act only by obeying the Constitution and law. Every state or municipal institution through which state functions are performed, as well as every state servant, must pay regard to the requirements of lawfulness. State servants must not abuse the powers established for them and must not violate requirements of legal acts. In its ruling of 30 June 2000, the Constitutional Court held that state institutions and officials are obligated to protect and defend human rights and freedoms; it is very important that, while fulfilling the functions entrusted to them, state institutions and officials themselves not violate human rights and freedoms. Under the Constitution, the legislature has the duty to regulate state service relations, and the system of state service should function in such a manner that not only responsibility would be established for violations committed while in state service, but also persons who committed violations while in state service would actually be held liable.

The Constitution guarantees the right for every citizen to appeal against decisions adopted by state institutions or their officials (Paragraph 2 of Article 33 of the Constitution). Complaints of citizens about the abuse of authority or bureaucratic intransigence by state and municipal officials (with the exception of judges) are examined by the Seimas Ombudsmen; they have the right to submit a proposal before a court for dismissing the guilty officials from office (Paragraph 1 of Article 73 of the Constitution). The observance of the Constitution and laws and the execution of the decisions of the Government by municipalities are supervised by the representatives appointed by the Government (Paragraph 2 of Article 123 of the Constitution). Paragraph 1 of Article 134 of the Constitution provides that the National

Audit Office supervises the lawfulness of the possession and use of state-owned property and the execution of the state budget.

It is worth mentioning in this context that Paragraph 2 of Article 30 of the Constitution provides that compensation for material and moral damage inflicted on a person is established by law. When interpreting the legal regulation laid down in Paragraph 2 of Article 30 of the Constitution, the Constitutional Court held that this paragraph “provides for the duty of the legislature to pass a law or laws providing for compensation for damage for a person who sustained material or moral damage”, that “laws must provide for the actual defence of violated human rights and freedoms”, that “such defence must be combined with the protection of other values enshrined in the Constitution”, and that “the Constitution guarantees the right of an individual to compensation for material or moral damage, including the recovery of damage under judicial procedure” (ruling of 30 June 2000). In the Constitutional Court’s ruling of 20 January 1997, it is held that “the necessity to compensate for material and moral damage inflicted on a person is a constitutional principle”, which “must be considered in the law-making activity”, and that Paragraph 2 of Article 30 of the Constitution “clearly indicates the form of a legal act whereby compensation for material and moral damage must be regulated” – this must be done by means of a law.

On the other hand, state servants must not experience unreasonable interference in their activity, and they must be protected from any unlawful pressure or unlawful requirements (including unlawful pressure by and unlawful requirements of state or municipal politicians). State servants may not be commissioned unlawful assignments or instructions, and state servants may not carry out such assignments or instructions and may not in any other way be forced to obey them.

Requirements for state service: to have regard to the principles of the separation of powers and the limitation on the scope of powers

The Constitutional Court’s ruling of 13 December 2004

The state service system must be organised and must function strictly according to the constitutional principles of the separation of powers and the limitation on the scope of powers.

[...]

When paying regard to the constitutional principle of the separation of powers, respective powers must be assigned to every institution (as a certain level of the system of state service) of the branches (legislative, executive, judicial) of state power. Laws must consolidate such a model of organising state service where every institution has a clearly defined competence, and disputes (if any) between them (or between state servants) related to competence are settled on the basis of law and in accordance with a legal procedure.

The constitutional principle of the separation of powers is also inseparable from the provision of Paragraph 2 of Article 5 of the Constitution, whereby the scope of powers is limited by the Constitution, which is binding not only on the institutions of state power specified in Paragraph 1 of Article 5 of the Constitution, but also on other institutions that enjoy authoritative empowerments, but are not categorised as belonging to the legislative, the executive, or the judicial branch, including the state servants employed at these institutions, too. In this context, it should be noted that, as already held by the Constitutional Court, if such a legal regulation were established where not only the powers of the institution of state power that is pointed out in Paragraph 1 of Article 5 of the Constitution, but also the powers of some other state institution are expanded unreasonably from the constitutional standpoint, it would have to be held that the provision of Paragraph 2 of Article 5 of the Constitution, whereby the scope of powers is limited by the Constitution, is also violated (rulings of 24 December 2002 and 13 May 2004).

Requirements for state service: guaranteeing the public interest

The Constitutional Court’s ruling of 13 December 2004

... the mission of state service is to ensure the public interest. Thus, in state service, the public interest must prevail over private interests. In state service, conflicts between public and private interests must be avoided and no conditions for the emergence of such conflicts should be created. The possibilities provided

by state service must not be used for private benefit. When ensuring the public interest, it is essential to avoid unreasonable and unlawful impact by the interest groups, and, what is even more important, pressure on state servants, who adopt decisions when carrying out public administration and providing public services (or participate in drafting and executing these decisions, coordinating and/or controlling the implementation thereof, etc.). In its ruling of 25 May 2004, the Constitutional Court held the following: “In order that the citizens – the national community – could reasonably trust state officials so that it would be possible to ascertain that all state institutions and all state officials follow the Constitution and law and obey them, and that those who do not obey the Constitution and law would not hold office for which the confidence of the citizens – the national community – is needed, it is necessary to ensure public democratic control over the activity of state officials and their accountability to society comprising, *inter alia*, the possibility of removing from office those state officials who violate the Constitution and law, who bring their personal interests or the interests of a certain group above the public interests, or who bring discredit on state authority by their actions.” In its ruling of 1 July 2004, the Constitutional Court held the following: “According to the Constitution, the legislature has the duty to establish, by means of legal acts, such a legal regulation that would ensure that state officials, who perform their functions in implementing state power, and all persons who make decisions important to society and the state are able to properly exercise their powers, that clashes between public and private interests are avoided, that no legal conditions are created for state officials, who perform their functions in implementing state power, and for all persons who make decisions important to society and the state for acting in the private interests or interests of a group instead of the interests of the Nation and the State of Lithuania and for using their status for the benefit of their own, their close relatives, or other persons in order to make it possible to effectively control how state officials, who perform their functions in implementing state power, and all persons who make decisions important to society and the state follow the said requirements, and in order that the said legal regulation would make it possible to hold liable under the Constitution and law the aforementioned state officials or other persons if they do not follow these requirements.”

Under the Constitution, when protecting state service from unreasonable and unlawful impact by interest groups (thus, also political forces), certain levels of the system of state service must be depoliticised. According to Article 141 of the Constitution, persons performing actual military service or alternative service, as well as the officers of the national defence system, the police, and the interior, non-commissioned officers, re-enlistees, and other paid officials of paramilitary and security services who are not retired to the reserve may not take part in the activities of political parties and organisations.

It follows from the Constitution that state service as a system of professional activity must be impartial and neutral in regard to participants of the political process, the system of state service must be organised and must function in order to ensure the continuity of guaranteeing the public interest after changes in political power take place. Under the Constitution, the possibilities provided by state service may not be used for political activity; the legislature has the duty to ensure this by means of a law. State servants must not give any priorities for any persons due to their political, moral, religious, or other attitudes, beliefs or activity, or their other status. Otherwise, the constitutional principle of the equality of the rights of all persons, which prohibits any discrimination of persons or provision of privileges to them, would be deviated from.

Requirements for state service: openness and accessibility

The Constitutional Court's ruling of 13 December 2004

The constitutional provision that state institutions serve the people, the constitutional imperative of an open society, and the constitutional concept of state service imply that state service should be open and accessible to the people whose affairs it manages. ... the mission of the state as the organisation of all society, thus, also the mission of state service, is to ensure human rights and freedoms and to guarantee the public interest.

The work of both the state service system and state institutions must be organised in such a manner that the people who address state servants would not experience any arbitrariness, the abuse of authority,

or bureaucratic intransigence, and that their requests would be examined and decided without delay. The requirement of the accessibility of state service to people must also be related to the harmony of state service as a system (thus, the said requirement must also be related to the necessity to ensure the unity of the state service system). It is not allowed that the work of state and municipal institutions be organised in such a manner that a person who applies to a state or municipal institution or a state servant with any issue would be forced to re-apply with the same issue due to the fact that the examination of the issue, despite the fact that this application was reasonable and was in conformity with all requirements established in legal acts (including the procedural requirements), was not initiated after the first application.

In this context, it is worth noting that Paragraph 1 of Article 73 of the Constitution provides that complaints of citizens about the abuse of authority or bureaucratic intransigence by state and municipal officials (with the exception of judges) are examined by the Seimas Ombudsmen, who have the right to submit a proposal before a court for dismissing the guilty officials from office. Paragraph 1 of Article 30 the Constitution provides that a person whose constitutional rights or freedoms are violated has the right to apply to a court.

The constitutional imperative of the openness of state service and its accessibility to people must also be linked with the provision of Article 14 of the Constitution, where the status of the Lithuanian language as the state language is consolidated. In its ruling of 21 October 1999, the Constitutional Court held that the state language, *inter alia*, integrates the civil Nation, ensures the smooth functioning of state and municipal institutions, and is an important guarantee of the equality of the rights of citizens, as it enables all citizens to associate with state and municipal institutions under the same conditions, as well as to implement their rights and legitimate interests. It was also held in the aforementioned ruling of the Constitutional Court that the constitutional establishment of the status of the state language also means that the legislature must establish by means of a law how the use of this language is ensured in public life and, in addition, it must provide for the means of the protection of the state language. According to the Constitution, the Lithuanian language must be used in all state and municipal institutions and in all establishments, enterprises, and organisations that are on the territory of Lithuania; laws and other legal acts must be published in the state language; clerical work, accounting, accountabilities, and financial papers must be in Lithuanian; state and local government institutions, establishments, enterprises, and organisations correspond with each other in the state language. The nationality of an individual (including relationships with the officials or state servants of a state or municipal institution) may not serve as the basis for him/her to demand that the rules arising from the status of the state language be not applied as far as he/she is concerned; otherwise, the constitutional principle of the equality of all persons before the law, courts, state institutions, and officials would be violated. The status of the Lithuanian language as the state language implies the necessity to organise the state service system and ensure that it functions in such a manner that only the persons who have a thorough knowledge of the state language be appointed to state service (certain position); a thorough knowledge of the state language is a necessary precondition in order to ensure that these persons, while acting as state servants, will be able to fulfil their duties, that the persons who in writing or orally address state servants will face no difficulties in communicating with them, and that normal communication between various state and municipal institutions will be ensured, that they will face no other difficulties when fulfilling their official duties or tasks related to state service.

Requirements for state service: publicity

The Constitutional Court's ruling of 13 December 2004

The constitutional provision that state institutions serve the people, the constitutional imperative of an open society, the constitutional concept of state service, and the openness of state service also imply the requirement for publicity of state service as a system. State service is service to the State of Lithuania and the Lithuanian Nation; therefore, society must receive information about the work of state institutions. The reasoning of decisions adopted by state and municipal institutions, as well as by state servants, must be clear and transparent, and the information about the reasoning of these decisions must be available.

The requirement of the publicity of state service is also linked with the right of citizens, consolidated in the Constitution, to criticise the work of state institutions or their officials and to appeal against their decisions, as well as with the prohibition against persecution for criticism (Paragraph 2 of Article 33 of the Constitution); the said requirement is also linked with the prohibition against the censorship of mass information (Paragraph 1 of Article 44 of the Constitution) and the prohibition (imposed, *inter alia*, on the state) against monopolising mass media (Paragraph 2 of Article 44 of the Constitution). The Constitutional Court has noted that, in a democratic state under the rule of law, the public performance of duties by state officials and servants is one of the essential principles of the protection against their arbitrariness or abuse (ruling of 8 May 2000).

In this context, it is worth mentioning that, under Paragraph 2 of Article 25 of the Constitution, no one must be hindered, *inter alia*, from seeking or receiving information, and, according to Paragraph 3 of this article, the freedom to receive information may not be limited otherwise than by means of a law when this is necessary to protect human health, honour or dignity, private life, or morals, or to defend the constitutional order. Paragraph 5 of Article 25 of the Constitution prescribes that citizens have the right to receive, according to the procedure established by law, any information held about them by the state.

On the other hand, it should be noted that the requirement of the publicity of state service may not be interpreted as meaning that, at the request of various persons, information must be provided in a compulsory manner even in cases where the rights of a person or other constitutional values would be violated due to such disclosure of information. The requirement of the publicity of state service should also be linked with the requirement that state servants must be loyal to the State of Lithuania and with the requirement of the legitimacy of the activity of state service: making public, in an illegal manner, certain information that constitutes a secret protected under the Constitution and laws, or the illegal disclosure of such information in any other way, must lead to responsibility provided for by law.

Requirements for state service: qualification

The Constitutional Court's ruling of 13 December 2004

The necessity to carry out public administration and provide public services continuously and effectively by ensuring the public interest, the concept of state service as a professional activity, and the requirement of the efficiency of state service result in the requirement for qualification. State service must be qualified, it must be able to fulfil tasks commissioned to it. This fact implies quite high (higher than the requirements for other employees) requirements of qualification and professional skills for state servants, especially for officials (first of all, for those who make single-person decisions), as well as the necessity to ensure that these persons, when in service, would have the possibility of the continuing improvement of their professional competence.

The material and financial ensuring of the functioning of the state service system

The Constitutional Court's ruling of 13 December 2004

The efficiency of the functioning of the state service system also depends on material and financial stability. State service is supported from the state (municipal) budget. ... the professional activity of state servants must also be remunerated from the state (municipal) budget. For this reason, the funding from the budget should be envisaged for all state tasks; otherwise, state service would become ineffective and this would reduce the trust of society and citizens in state service, would degrade or even ruin its authority and, finally, would diminish the trust of people in the state itself and its law.

The allocation of funds for state service, its material supply and the use of allocated funds should be linked with the requirements of legitimacy and publicity raised for state service, with the necessity to ensure the prevalence of the public interest over private interests and to avoid any conflict between public and private interests. The funds and other resources must be used transparently. An effective and independent system of control is necessary for this purpose, and it must, *inter alia*, be independent from the institutions or their officials whose activity or decisions are under control. It has already been mentioned that, according

to Paragraph 1 of Article 134 of the Constitution, the National Audit Office supervises the lawfulness of the possession and use of state-owned property and the execution of the state budget.

The right to enter state service (Paragraph 1 of Article 33 of the Constitution)

The Constitutional Court's ruling of 13 December 2004

These and other constitutional requirements for state service as a system imply, in turn, certain constitutionally reasonable requirements for persons who seek to implement their constitutional right to enter state service on equal terms or who have already implemented this constitutional right, i.e. for those who have already become state servants.

The aforesaid right of citizens is consolidated in Paragraph 1 of Article 33 of the Constitution, which prescribes: "Citizens shall have the right to participate in the governance of their State both directly and through their democratically elected representatives, as well as the right to enter on equal terms the State Service of the Republic of Lithuania."

The constitutional requirements for persons who seek to implement or who have already implemented their right to enter state service on equal terms are, first of all, requirements for persons who enter state service, and, secondly, requirements for state servants. The constitutionally reasonable and necessary guarantees for persons who enter state service and guarantees for state servants are correspondingly linked with the said two groups of requirements.

... the legal regulation laid down in Paragraph 1 of Article 33 of the Constitution and the constitutional concept of state service should be disclosed not only by evaluating their links with the constitutional principle of a state under the rule of law, but also with other provisions of the Constitution that must, in turn, be interpreted on the basis of the constitutional principle of a state under the rule of law.

[...]

Entering state service of the Republic of Lithuania on equal terms is a constitutional right of citizens. State service relationships comprise relationships linked with the implementation of the right of citizens to enter on equal terms the state service of the Republic of Lithuania, as well as relationships that arise when a citizen enters state service and performs his/her duties at state service; some other relationships that arise when a person leaves state service (for example, relationships linked with certain restrictions on the professional activity of former state servants, with pensions granted and paid to former state servants, etc.) are also closely linked with state service relationships. Thus, the implementation of the right of a citizen to enter on equal terms the state service of the Republic of Lithuania is linked with the implementation of other human rights Insofar as state service relationships are linked with human rights and freedoms, they must be regulated by means of laws. In this context, it is worth mentioning that "material legal norms take priority over procedural legal norms", because "as a rule, the latter are of an official character, i.e. they are aimed at implementing material legal norms" (ruling of 12 November 1996). The procedural relationships of state service (as well as those related to it) may be regulated by means of substatutory acts; however, this must be done in such a manner that the said substatutory acts would not compete with the legal regulation established by means of a law.

The right to enter state service does not include the right to seek to be elected as a member of the Seimas, the President of the Republic, a municipal council member, or to be appointed the Prime Minister or a minister, or to become a judge

The Constitutional Court's ruling of 13 December 2004

It was held in this ruling of the Constitutional Court that professional state servants adopt decisions when carrying out public administration and/or providing public services (or participate in drafting and executing these decisions, in coordinating and/or controlling the implementation thereof, etc.); however, they (unlike the members of the Seimas, the President of the Republic, the members of the Government, or judges) do not perform any functions when implementing state power. The Constitutional Court has also

held in this ruling that the notion “state service”, which is used in the Constitution, does not include the office of a member of the Seimas, the President of the Republic, the Prime Minister or a minister, a judge, or a member of a municipal council.

It should also be noted that the fact that someone becomes a member of the Seimas, the President of the Republic, the Prime Minister, or a minister is a result of the political process – an election to the Seimas, an election to the office of the President of the Republic, or the formation of the Government respectively. The grounds and procedure for appointing the justices of the Constitutional Court are established in Article 103 of the Constitution, while those for appointing judges of other courts are laid down in Article 112 of the Constitution; in this context, it is worth noting that the appointment of the justices of the Constitutional Court and judges of other courts depends on the political will of particular officials of state power (President of the Republic or the President of the Republic together with the members of the Seimas). Therefore, although the work of a judge is a professional activity as in the case of state service, there are no grounds for stating that the same requirement of “equal terms” (consolidated in Paragraph 1 of Article 33 of the Constitution) should be applied to becoming a member of the Seimas, the President of the Republic, the Prime Minister or a minister, or a judge as it is applied to entering state service.

Under the Constitution, becoming a member of a municipal council is also a result of a political activity. Paragraph 2 of Article 119 of the Constitution provides that the members of municipal councils are elected for a four-year term, as provided for by law, from among the citizens of the Republic of Lithuania and other permanent residents of particular administrative units by the citizens of the Republic of Lithuania and other permanent residents of these administrative units on the basis of universal, equal, and direct suffrage by secret ballot.

Thus, the right of a citizen to enter on equal terms the state service of the Republic of Lithuania, as consolidated in Paragraph 1 of Article 33 of the Constitution, does not comprise his/her constitutional right to seek to become elected (if he/she meets the conditions established in the Constitution and laws) a member of the Seimas, the President of the Republic, the Prime Minister or a minister, or a member of the municipal council, nor does it comprise the right to become (if he/she meets the conditions established in the Constitution and laws) a justice of the Constitutional Court or a judge of any other court – the said rights are implied by other provisions of the Constitution. The said rights and the right of a citizen to enter on equal terms the state service of the Republic of Lithuania are different subjective rights.

The right to enter state service as a variation of the right to freely choose an occupation; the general and special conditions for entering state service (Paragraph 1 of Article 33 and Paragraph 1 of Article 48 of the Constitution)

The Constitutional Court’s ruling of 13 December 2004

State service is a professional activity carried out by the employees of state or municipal institutions, i.e. it is a work activity. Thus, the right to enter on equal terms the state service of the Republic of Lithuania, as consolidated in Paragraph 1 of Article 33 of the Constitution, is related to the right of everyone to freely choose an occupation or business, which is established in Paragraph 1 of Article 48 of the Constitution. In this respect, the relations between the provision “Citizens shall have the right ... to enter on equal terms the State Service of the Republic of Lithuania” of Paragraph 1 of Article 33 of the Constitution and the provision “Everyone may freely choose a job or business” of Paragraph 1 of Article 48 thereof may be regarded as relations between *lex specialis* and *lex generalis*.

It should be noted that the right of each person to freely choose an occupation in Paragraph 1 of Article 48 of the Constitution is formulated broader, i.e. as the right of each person to “freely choose a job or business”. The Constitutional Court has held that the provision of Paragraph 1 of Article 48 of the Constitution, whereby everyone may freely choose an occupation or business, is a norm of general nature based on the universally recognised concept of human freedom (ruling of 4 March 1999), which means the possibility of choosing the type of occupation at one’s own discretion, i.e. by deciding freely on this subject (ruling of 10 July 1996) and that the freedom to freely choose an occupation or business, which is

consolidated in Paragraph 1 of Article 48 of the Constitution, is one of the necessary conditions for satisfying human vital needs and ensuring the appropriate place of an individual in society (rulings of 4 March 1999 and 4 July 2003).

Thus, under the Constitution, a person who seeks to implement his/her constitutional right to work has the right to decide freely whether to choose an occupation in the private sector or a private business, or to seek to be employed in state service. The provision “Everyone may freely choose a job or business” of Paragraph 1 of Article 48 of the Constitution implies the duty of the state and the legislature to create the legal conditions for the implementation of this right (rulings of 4 March 1999 and 4 July 2003).

The constitutional right of a citizen to enter the state service of the Republic of Lithuania on equal terms, as a variation of the constitutional right of everyone to freely choose an occupation, especially when taking into consideration the provision “on equal terms” of Paragraph 1 of Article 33 of the Constitution, should be linked with the constitutional principle of the equality of the rights of persons (equality of persons before the law, the court, and other state institutions and officials).

[...]

In this context, it needs to be emphasised that citizens who seek to become employed in state service must not be discriminated, nor must they be granted privileges on the grounds *expressis verbis* specified in Paragraph 2 of Article 29 of the Constitution or on any other constitutionally unjustified grounds.

It is also worth noting that the constitutional imperative of equal terms when entering state service implies the competition between those who enter it, as well as an objective, impartial assessment and selection of those who enter state service. The legislature has a certain degree of discretion to establish the particularities of appointment to state service in regard to persons whose term of office at state service is linked with the term of office of the President of the Republic, members of the Seimas, members of the Government, and members of municipal councils. According to the Constitution, a person who believes that the principle of the equality of rights, thus, including his/her constitutional right to enter on equal terms the state service of the Republic of Lithuania, was violated when he/she attempted to enter state service has the right to seek to defend his/her violated right in a court.

The Constitutional Court has held that, when creating the legal preconditions for implementing the right to freely choose an occupation or business, the legislature is empowered to establish, by taking account of the nature of an occupation, the conditions of implementing the right to freely choose an occupation; in doing this, the legislature must observe the Constitution (ruling of 4 July 2003). ...

The constitutional mission of state service and special tasks assigned to state service determine the fact that certain general requirements – the general terms for entering state service – may and must be set for a citizen who enters state service, and that a person who fails to meet them will not be able to become a state servant. It should be stressed that the said requirements must be clear and common to all those who seek to hold a certain position in state service, and they must be known in advance to everyone who enters state service. Such requirements must be established by means of a law.

The following general requirements – the general conditions of entering state service – should be mentioned: loyalty to the State of Lithuania and its constitutional order, knowledge of the Constitution and the foundations of the legal system (including the catalogue of human rights and freedoms), a thorough knowledge of the state language, the absence of a conflict between the position sought and private interests (or the elimination of such a conflict before a person starts holding the position), etc. Moreover, general requirements linked with the personal characteristics of a person entering state service, his/her reputation, education, etc. may be established. The constitutionally reasonable general conditions preventing a person from entering state service may also be provided for.

The requirements of professionalism and qualification, which are raised before state service as a system, also imply particular requirements for persons who enter state service. ... state service relationships may and must be regulated in a differentiated manner, while taking account of the particularities of state (municipal) institutions and the functions fulfilled by them, the role of these institutions in the system of all institutions through which state functions are implemented, their competence, the professional skills necessary to particular state servants, and other important factors. Therefore, special requirements – special

terms for those who seek to join state service – for persons striving for a particular position in state service or in a concrete state or municipal institution may be established in legal acts. These special terms for entering state service may be differentiated according to the content of particular positions in state service. When establishing the said terms, regard must be paid to the Constitution. These terms should also be clear and common to everyone who seeks to be appointed to a certain position in state service, and must be known in advance to those who enter state service.

Mention should be made of the following requirements – special conditions for entering state service – as professional competence, experience, the knowledge of languages, expert knowledge and skills, etc., as well as the requirements linked with the reputation of a person who enters state service, his/her personal characteristics, etc. When appointing a person to a certain position, a great variety of special conditions may be provided for; for example, ones linked with the health of a person, his/her physical abilities, ties with other persons, etc. It should be emphasised that all established special requirements for entering state service must be constitutionally justified. Otherwise, the constitutional right of a citizen to enter on equal terms the state service of the Republic of Lithuania and the constitutional right of a person to freely choose an occupation would also be violated.

The relation between the right to enter state service and citizenship

The Constitutional Court's ruling of 13 December 2004

The notion “citizen”, which is used in Paragraph 1 of Article 33 of the Constitution, means that the right to enter state service is linked with the relation between a person and the State of Lithuania, i.e. citizenship. By the same, account should also be taken of the fact that foreigners and persons with no citizenship who legally stay in the Republic of Lithuania have the same rights and freedoms as citizens of the Republic of Lithuania if the Constitution, laws, and international treaties of the Republic of Lithuania do not provide otherwise (conclusion of 24 January 1995). Certain provisions of the Constitution that consolidate the rights of citizens of the Republic of Lithuania, as well as the provision “Citizens shall have ... the right to enter on equal terms the State Service of the Republic of Lithuania” of Paragraph 1 of Article 33 of the Constitution, may be interpreted expansively, i.e. in a manner that the notion “citizen” would include not only citizens of the Republic of Lithuania, but also citizens of foreign states and stateless persons. Still, this does not mean that citizens of foreign states and stateless persons may, as a matter of course, in all cases, and only on the basis of the Constitution, implement these rights, including the right to enter on equal terms the state service of the Republic of Lithuania, since the legislature has the powers, while fulfilling the international obligations of the Republic of Lithuania and acting on the basis of particular international treaties, to establish the conditions and procedure for implementing such rights. In this context, it should be noted that, under Paragraph 2 of Article 48 of the Constitution, the work of foreigners in the Republic of Lithuania is regulated by law. Since the constitutional right of a citizen to enter the state service of the Republic of Lithuania on equal terms is a variation of the constitutional right of everyone to freely choose an occupation; thus, a law may provide for such conditions and procedure, arising from the international obligations of the Republic of Lithuania and international treaties, for entering the state service of the Republic of Lithuania for citizens of foreign states and stateless persons that, in turn, must not be in conflict with the Constitution.

In this context, it needs to be noted that particular international obligations of the Republic of Lithuania stem from its membership in the European Union, which is constitutionally confirmed by the Constitutional Act of the Republic of Lithuania on Membership of the Republic of Lithuania in the European Union, a constituent part of the Constitution.

The right to make a career in state service

The Constitutional Court's ruling of 13 December 2004

The constitutional right of citizens to enter on equal terms the state service of the Republic of Lithuania also implies the right of persons appointed to state service to remain state servants until the moment when

the state service relationships are terminated on the grounds established in a law, as well as the right to make a career in state service when paying regard to the conditions provided for in a law, to attempts made by a state servant himself/herself to make a career, and to objective possibilities. A state servant must not face unnatural and unreasonable obstacles for making his/her career in state service.

The status of a state servant

The Constitutional Court's ruling of 13 December 2004

Having entered state service and having started holding certain office in state service (in a state or municipal institution), a citizen gains the status of a state servant. From this moment, in this state or municipal institution, he/she adopts decisions when carrying out public administration and/or providing public services (or participates in drafting and executing such decisions, in coordinating and/or controlling the implementation thereof, etc.) and, in this way, guarantees the public interest.

State servants are a special social group, the specifics of which are determined by the mission of state service and its social significance. Therefore, the legal status of state servants, as well as the implementation of the rights and freedoms enjoyed by them under the Constitution and laws, must bear important characteristics.

Requirements for state servants; limitations on activity not related to state service

The Constitutional Court's ruling of 13 December 2004

Since constitutional requirements for state service as a system imply certain constitutionally reasonable requirements for persons who seek to implement their constitutional right to enter on equal terms the state service of the Republic of Lithuania, the aforementioned requirements for state service as a system also imply requirements for state servants.

Under the Constitution, a state servant must properly fulfil his/her duties when observing the Constitution and law. He/she must be loyal to the State of Lithuania and its constitutional order, must observe the Constitution and laws, must respect, protect, and defend human rights and freedoms, must be impartial and neutral in regard to participants of the political process, must be just, must avoid a conflict between public and private interests, must not succumb to illegal pressure or illegal requirements, must not act in an arbitrary manner and must not abuse service, must improve his/her professional competence, must follow the requirements of professional ethics, must protect his/her reputation as a state servant and the authority of the institution in which he/she is employed, etc. Decisions adopted by a state servant must be transparent and their reasoning must be clear. The possibilities provided by state service must not be used for personal benefit or political activity; a state servant may not use his/her status for his/her private benefit or the private benefit of his/her close relatives or other persons. The legal regulation of state service relationships must be such that would make it possible to make sure that the aforementioned requirements are not violated. Public and democratic control over the activity of state servants and decisions adopted by them is an important condition of the trust of society in the state and its law.

The responsibility of a state servant for violations of law committed while in state service must be established by means of a law.

The legislature has the right to establish certain requirements that would limit the following activity of state servants, which is not related to state service: another occupation (business) or political and public activity that could result in a conflict between public and private interests of state servants and create the preconditions for using the possibilities provided by state service not for guaranteeing the public interest, but for private interests, where the said occupation (business) or political and public activity would hinder state servants from performing their official duties, or would be harmful to the authority of state service or a particular state or municipal institution and would bring discredit on them.

In its rulings, the Constitutional Court has held on more than one occasion that, according to the Constitution, it is permitted to impose limitations on human rights and freedoms if the following conditions are observed: the limitations are established by means of a law; the limitations are necessary in a democratic society in order to protect the rights and freedoms of other persons and the values consolidated in the

Constitution, as well as constitutionally important objectives; the limitations do not deny the nature or essence of the rights or freedoms; and the constitutional principle of proportionality is observed. In its ruling of 6 May 1997, having stated that “in state service relationships, the public interest is overriding”, the Constitutional Court held that “consideration should be given to the fact that, from a social point of view, both the public interest and the rights of persons ... are constitutional values”.

When imposing, by means of a law, limitations on the possibility of state servants to have another occupation, consideration should be given to the fact that, under the Constitution, these limitations should be such that would help avoid any conflict between public and private interests in state service, that these limitations would ensure that state service and the possibilities offered by it are used in the public interest and are never used in pursuit of self-interest, that state servants are not obstructed in the exercise of their duties, that the authority of state service or the authority of the respective state or municipal institutions is not undermined, and that no discredit is brought upon state service or upon the said institutions.

... the constitutional concept of state service, the constitutional mission of state service, the fact that, by its very characteristics, the activity of state service is a professional activity, imply that, while paying regard, *inter alia*, to the constitutional principle of proportionality, a law should impose such limitations on another occupation of state servants where the said limitations would prevent state servants from working in such enterprises, establishments, or organisations in which they have the powers of management, or in which they control or supervise the activity of, or adopt any other decisions related to, such enterprises, establishments, or organisations (or participate in drafting and carrying out those decisions, in coordinating and/or controlling the execution thereof, etc.).

[...]

... a regulation governing the right of state servants to have another occupation and receive other remuneration would be in compliance with the Constitution where such a regulation would make it possible to decide in each particular case whether to permit a state servant to have another occupation, by assessing in a mandatory manner whether such permission would result in preconditions for creating a conflict between public and private interests in state service, for using state service in pursuit of self-interest, for engaging in an activity bringing discredit upon state service, for interfering with the proper performance of the duties of a person holding office in state service, whether a state servant would work in the enterprises, establishments, or organisations in which he/she has the powers of management, or controls and supervises their activities, or adopts any other decisions related to such enterprises, establishments, or organisations, as well as whether there are any other circumstances due to which state servants may not have another occupation and receive other remuneration. The legislature must also provide for the subjects that would decide whether to permit or not to permit a state servant to have another occupation and receive other remuneration, as well as for the responsibility of such subjects for unlawful decisions adopted by them.

[...]

Under the Constitution, the legislature, when establishing the prohibitions precluding state servants from participating in the activity incompatible with state service, also has the right to establish, by means of a law, measures to ensure that these prohibitions would be observed, as well as, *inter alia*, responsibility for participation in activities incompatible with state service. One of the sanctions established by means of a law for participation in activities incompatible with state service may be dismissal from office.

In addition, it must be stressed that a state servant has the right to choose freely whether to work in state service and follow the imposed limitations on work and other activity, or to refuse another occupation or activity.

Social rights of state servants

The Constitutional Court's ruling of 13 December 2004

The right of citizens to enter on equal terms the state service of the Republic of Lithuania, which is consolidated in Paragraph 1 of Article 33 of the Constitution, and the right of everyone to freely choose an occupation, which is stipulated in Paragraph 1 of Article 48 of the Constitution, give rise to the connection of the constitutional right of citizens to enter on equal terms the state service of the Republic of Lithuania

with the other rights consolidated in Paragraph 1 of Article 48 of the Constitution, which are closely related to the constitutional right of each individual to work: the right to have proper, safe, and healthy conditions at work, as well as to receive fair pay for work and social security in the event of unemployment. These rights must be guaranteed for a state servant not to a lesser extent than for other employees; however, due to the type of state service as a specific work activity, their implementation may have certain particularities. The same could be said about other social and economic rights consolidated in the Constitution: the right of every working person to rest and leisure, as well as to annual paid leave, which is laid down in Paragraph 1 of Article 49 of the Constitution, the right to establish trade unions, which is provided for in Article 50 of the Constitution, the right to receive old-age and disability pensions, as well as social assistance in the event of unemployment, sickness, widowhood, the loss of the breadwinner, and in other cases provided for by law, which is consolidated in Article 52 of the Constitution, etc. On the other hand, certain social and economic rights of state servants at particular types of service may be restricted by means of a law due to the specificity of these types of service or the duties of state servants; for example, the right of employees to strike when defending their economic and social interests, which is consolidated in Paragraph 1 of Article 51 of the Constitution, may be restricted on the basis of Paragraph 2 of this article, which provides that limitations on this right and the conditions and procedure for its implementation must be established by law.

The Constitution guarantees that state servants, like other persons, will have the right to defend their violated rights in a court.

Requirements for former state servants

The Constitutional Court's ruling of 13 December 2004

Since ... some other relationships that arise when a person leaves his/her position in state service are closely linked with state service relationships, the constitutional requirements for state service as a system may result in the fact that (for example, in order to avoid the conflicts of public and private interests, to ensure trust in state service, and to protect other constitutional values) certain requirements for former state servants will also be established. For example, certain limitations may be imposed to prevent state servants from engaging in a certain working activity etc. When imposing such limitations, it is essential in all cases to pay regard to the norms and principles of the Constitution, and such limitations must be proportionate to the sought legitimate objective, which is necessary in a democratic society and is socially important.

The transparency of state service

The Constitutional Court's ruling of 22 January 2008

It is universally recognised that transparency, as the principle of the activity of the institutions of public power and officials, implies the imparting of information, communication, openness, and publicity (inasmuch as this does not harm other values protected by law), accountability to the respective community and responsibility for decisions adopted by the officials who adopt the said decisions, as well as the fact that adopted decisions must be well-founded and clear and that, if there is a need, it would be possible to rationally reason these decisions; other persons must have the possibility of disputing these decisions in accordance with an established procedure. Transparency must be linked with participatory democracy, freedom of information, and the possibility for the citizens and other persons to criticise the activity of state institutions. The transparency of state service is a necessary precondition against the consolidation of corruption and protectionism, against the discrimination of some persons and granting privileges to others, and against the abuse of authority; thus, the transparency of state service is also a necessary precondition for people for trusting the institutions of public power and the state in general.

... the requirement for the transparency of state service is not mentioned in the Constitution *expressis verbis*, but this certainly does not mean that the transparency of state service is not regarded as an imperative that stems from the Constitution. Quite to the contrary, the transparency of state service is a constitutional principle. The imperative of the transparency of state service stems from various provisions (norms and

principles) of the Constitution, *inter alia*, from the provisions of Article 5 thereof, whereby the scope of powers is limited by the Constitution (Paragraph 2) and state institutions serve the people (Paragraph 3), from the provisions of Article 25 thereof, which enshrine freedom of expression and freedom of seeking, receiving, and imparting information and ideas, as well as the right of citizens to receive, according to the procedure established by law, any information held about them by state institutions (Paragraph 5), and from the provisions of Article 33 thereof, which state that citizens have the right to participate in the governance of their state both directly and through their democratically elected representatives, as well as the right to enter on equal terms the state service of the Republic of Lithuania (Paragraph 1), that citizens are guaranteed the right to criticise the work of state institutions or their officials and to appeal against their decisions and that persecution for criticism is prohibited (Paragraph 2), that citizens are guaranteed the right of petition, and that the procedure for the implementation of this right is established by law (Paragraph 3).

The principle of the transparency of state service ... should be interpreted while taking into consideration other provisions of the Constitution, *inter alia*, the striving for civil society, which is proclaimed in the Preamble to the Constitution, the constitutional imperatives of civic consciousness, open society, and social harmony, the constitutional principles of a state under the rule of law, the equality of the rights of persons, justice, democracy, responsible governance, as well as the constitutional concept of state service, which implies, among other things, the publicity and openness of state service as a system.

The selection of applicants for state service; recording the examination of applicants for a position in state service

The Constitutional Court's ruling of 22 January 2008

Because of the fact that the right of citizens to enter state service on equal terms stems from the Constitution, a law must establish the grounds (principles) for testing the knowledge and capabilities of applicants for the position of a state servant where the said knowledge and capabilities are necessary in order to perform the duties of a state servant. ... the knowledge and capabilities of a person, which are necessary in order to perform the duties of a state servant, may be tested by examining him/her.

It should be emphasised that the functioning and efficiency of all state service very much depends on the selection of persons for state service. When a person is selected for the position of a state servant by means of competition while examining him/her, such a procedure may not be regarded as a formal matter only. The examination – regardless of whether it is a written or a verbal examination or whether it is both a written and verbal examination – must have its purpose and must be oriented to the testing and assessment of the knowledge and capabilities that are necessary for every state servant, as well as of the specific knowledge and capabilities that are necessary in order to implement the functions that are established in the position description of a state servant for which a person is aspiring. The winner of the competition to a certain position of a state servant – the person who will perform specific functions defined in the position description of a state servant – is established according to the examination results of the applicants who participated; therefore, the questions (tasks) of the examination – regardless of whether it is a written or a verbal examination or whether it is both a written and verbal examination – must first of all be related to those positions in state service for which applications have been filed (for which the competition is held).

... the Constitutional Court has held in its acts more than once that a person who thinks that his/her rights or freedoms are violated has an absolute right to an independent and impartial court – an arbiter that would settle a dispute; under the Constitution, the legislature has the duty to establish such a legal regulation whereby all disputes regarding any violation of the rights or freedoms of persons could be settled in a court; the rights of a person must be defended not formally, but in reality and effectively against unlawful actions of private persons, as well as against those of state institutions or its officials. ...

Thus, in order that persons could implement, not formally, but in reality and in an effective manner, their right to defend in a court their violated constitutional right to enter on equal terms the state service of the Republic of Lithuania, the reasoning of decisions by which they are not appointed to the position of a

state servant must be clear and the information regarding the reasoning of these decisions must be accessible to a court. Otherwise, a court would not be able to decide the respective case.

The Constitutional Court has held that a prelitigation procedure for settling disputes may also be established (rulings of 2 July 2002, 4 March 2003, 17 August 2004, 29 December 2004, 7 February 2005, and 16 January 2006 and the decision of 8 August 2006).

Thus, the information about the decisions regarding the non-appointment of a person to a position in state service must also be accessible to institutions that decide disputes in accordance with a prelitigation procedure.

Consequently, if a law prescribes that the knowledge and capabilities of a person that are necessary for carrying out the duties of a state servant are tested by examining him/her, the course of the examination (*inter alia*, the questions of the members of the examination commission and the answers of the applicants) must be recorded and must be accessible both to institutions that decide the respective disputes and to courts.

It also needs to be emphasised that various ways of recording the course of such an examination may be chosen. ... it needs to be noted that, in protecting the data regarding the course of examinations and in disclosing them according to the procedure established by law, regard must be paid to the right of a person to privacy, which is enshrined in Article 22 of the Constitution.

It also needs to be emphasised that a court that decides a case regarding the non-appointment of a person to a position in state service acts not as a certain “commission for the consideration of examination complaints”, but as a jurisdictional institution, which decides whether the procedure of examination (competition) and the constitutional right of a person to enter the state service of the Republic of Lithuania on equal terms were violated.

The right to enter state service (Paragraph 1 of Article 33 of the Constitution)

The Constitutional Court's ruling of 7 July 2011

Under Paragraph 1 of Article 33 of the Constitution, citizens, *inter alia*, have the right to enter on equal terms the state service of the Republic of Lithuania.

The constitutional right to enter on equal terms state service should be linked, *inter alia*, to the right of each individual to freely choose an occupation, which is consolidated in Article 48 of the Constitution. In its rulings of 13 December 2004 and 13 August 2007, the Constitutional Court noted, *inter alia*, that the constitutional right of citizens to enter the state service of the Republic of Lithuania on equal terms is a variation of the constitutional right of every person to choose an occupation.

It needs to be noted that the provision of Paragraph 1 of Article 33 of the Constitution, which consolidates the right of citizens to enter on equal terms the state service of the Republic of Lithuania, should not be interpreted only linguistically and should not be understood only as the right to enter state service, i.e. only as one related to the appointment of a person to state service. As the Constitutional Court has noted more than once, state service relationships comprise not only the relationships linked to the implementation of the right of citizens to enter on equal terms the state service of the Republic of Lithuania, but also the relationships that arise after they enter state service and when they perform their duties in state service (rulings of 13 December 2004 and 13 August 2007).

In its ruling of, *inter alia*, 13 August 2007, the Constitutional Court held that, when creating the legal preconditions for implementing the right to freely choose an occupation or business (thus, also to enter state service), the legislature is empowered to establish, by taking account of the nature of an occupation, the conditions of implementing the right to freely choose an occupation.

The Constitutional Court has also held that the right of citizens to enter on equal terms the state service of the Republic of Lithuania is not absolute: the state cannot and does not assume the obligation to employ every person in state service. State service must be qualified, and persons employed in state service must be able to fulfil tasks commissioned to this service. Those who wish to become state servants or officials must also have required education, professional experience, and certain personal characteristics; in addition, the higher the position or the more important the area of activities, the higher the requirements

that are raised before persons holding such positions (rulings of 4 March 1999, 13 August 2007, and 22 January 2008).

Requirements for state service: loyalty to the State of Lithuania and its constitutional order

The Constitutional Court's ruling of 7 July 2011

Under the Constitution, state service is service to the State of Lithuania and the civil Nation; therefore, state service should be loyal to the State of Lithuania and its constitutional order; one of the general conditions of entering state service is loyalty to the State of Lithuania and its constitutional order (rulings of 13 December 2004 and 13 August 2007). Only such persons who are loyal to the state and whose loyalty to the state and reliability do not raise any doubts may work in state institutions (rulings of 11 November 1998, 4 March 1999, and 13 August 2007).

Vetting the reliability of both applicants for positions in state service and state servants; assessing the reliability and loyalty to the State of Lithuania of persons who are seeking to hold or are holding a position in state service where such a position is connected with the use or protection of classified information (on the protection of classified information, also see 2. The constitutional status of persons, 2.2. Civil (individual) rights and freedoms, 2.2.7. The freedom to express convictions and freedom of information, 2.2.7.1. The protection of the freedom to express convictions and freedom of information, the ruling of 7 July 2011)

The Constitutional Court's ruling of 7 July 2011

The legislature not only may, but also must establish such a legal regulation that would permit vetting the reliability – loyalty to the State of Lithuania, reputation, etc. – of those persons who seek to hold a position in state service. The reliability of applicants for the positions in state service must be vetted yet before they start holding office. When state servants are in office, their reliability may be also verified if reasonable doubts arise. If there is the reasonably stated non-reliability of a person who seeks a certain position in state service, such a person may not be accepted to the position (ruling of 13 August 2007).

In its ruling of 13 December 2004, the Constitutional Court held that ... one of the special conditions for entering state service [may be] the requirements related to the reputation of a person who enters state service, his/her personal characteristics, etc. When appointing a person to a certain position, a great variety of special conditions may be provided for; for example, ones linked with the health of a person, his/her physical abilities, ties with other persons, etc. The special conditions for entering state service may be differentiated according to the content of certain positions in state service. All established special requirements for entering state service must be constitutionally justified.

... under the Constitution, a special condition established for persons seeking to hold or holding a position in state service where such a position is connected with the use or protection of classified information is an especial and not in the least questionable reliability of these persons and their loyalty to the State of Lithuania. The reliability of a person who seeks to hold or holds a position in state service that is connected with the use or protection of classified information, as well as the loyalty of that person to the State of Lithuania, must be assessed by taking account of all significant circumstances characterising that person, *inter alia*, his/her activity, committed violations of law, his/her professional and personal qualities, reputation, and ties with other persons. Therefore, the legislature has broad discretion while regulating the relationships connected with the protection of state secrets and official secrets, *inter alia*, when establishing the criteria for the reliability of persons who seek to hold or hold a position in state service where such a position is connected with the use or protection of classified information and for the loyalty of these persons to the State of Lithuania, as well as the procedures for screening such persons. In the course of implementing the said discretion, the legislature must pay regard to the norms and principles of the Constitution, *inter alia*, the constitutional principle of a state under the rule of law.

In this context, it also needs to be mentioned that, in its ruling of 13 August 2007, the Constitutional Court noted, *inter alia*, that the legal regulation of the relationships related to the verification of the reliability of a person (both the reliability of a person who seeks to hold a position in state service and the

reliability of a person who already holds such a position) must be such that minor, coincidental, or similar facts and circumstances would not become the basis for the non-reliability of a person seeking to hold or holding a position in a state or municipal institution, and that the non-reliability of such a person would not be stated by referring to presumptions alone.

... it is not permitted to establish any such a legal regulation that would allow a state institution authorised by law to state, on the basis of minor circumstances alone, the unreliability (or the disloyalty to the State of Lithuania) of a person seeking to hold or holding a position in state service where such a position is connected with the use or protection of classified information. However, this does not mean that the legislature may not provide for such measures of the protection of classified information that would enable to prevent, in advance, threats to the security of classified information, and, at the same time, threats to state interests.

[...]

... the fact that a person is not held guilty of committing a criminal act until the guilt of the person in committing the said act is proven in accordance with the procedure established by law and recognised by an effective court judgment does not yet mean that a person seeking to hold or holding a position in state service where such a position is connected with the use of classified information and protection thereof necessarily deserves the trust of the state and that a state institution authorised by law may not have certain doubts as to the reliability of that person or his/her loyalty to the State of Lithuania, which would be raised not as a result of the established guilt of the person in committing a criminal act, but by certain factual circumstances, the activity of the person, his/her personal characteristics, reputation, ties, or other significant circumstances, *inter alia*, ones relating to a possibly committed criminal act.

Thus, the circumstances that raise doubts as to the reliability of a person seeking to hold or holding a position in state service where such a position is related to the use of classified information or protection thereof, or regarding the loyalty of such a person to the State of Lithuania, can be also connected with a criminal act possibly committed by that person. In assessing the said circumstances, a state institution authorised by law does not administer justice, nor does it judge concerning the guilt of the person in committing a criminal act.

[...]

... the circumstances that a person is held criminally liable for an intentional criminal act or is subject to a pretrial or operational investigation in relation to the said act may imply the vulnerability of the person and, at the same time, raise doubts as to his/her reliability and loyalty to the State of Lithuania.

[...]

Although the legislature has broad discretion in regulating the relationships connected with the protection of state secrets and official secrets, it may not establish any such a legal regulation that would create the preconditions for a state institution authorised by law to state, on the basis of minor circumstances, the existence of the grounds for the unreliability of a person holding a position in state service where such a position is connected with the use of classified information and protection thereof, as well as the existence of the grounds for the disloyalty of such a person to the State of Lithuania, as a result of which the person would lose his/her position in state service.

[...]

... the provision “Citizens shall have ... the right to enter on equal terms the state service of the Republic of Lithuania” of Paragraph 1 of Article 33 of the Constitution and the aforementioned constitutional imperatives stemming from the principle of a state under the rule of law give rise to the duty of the legislature to establish such a legal regulation that would lay down an alternative measure for revoking the authorisation to handle or familiarise oneself with classified information or a security clearance and for the subsequent dismissal of a person from a certain position in state service, where the said measure would create the preconditions for a sufficient individualisation of the limitations on the rights and freedoms of a person and for assessing as much as possible the individual situation of each person. Such a measure, *inter alia*, is suspension from office applied in cases where a person is held criminally liable for an intentional criminal act or is subject to a pretrial or operational investigation in relation to the

said act; the said suspension creates the preconditions for the additional verification of the reliability of a person and his/her loyalty to the State of Lithuania in order to determine whether his/her continued employment would pose a threat to the security of classified information.

The work pay of state servants

See 2. The constitutional status of persons, 2.4. Economic, social, and cultural rights, 2.4.1. Economic rights, 2.4.1.2. The right to work, 2.4.1.2.4. The right to receive fair pay for work, the ruling (no KT29-N15/2016) of 27 October 2016.

Equal competition between persons entering state service (Paragraph 1 of Article 33 of the Constitution)

The Constitutional Court's ruling of 6 June 2018

... Paragraph 1 of Article 33 of the Constitution, which guarantees citizens the right to enter on equal terms the state service of the Republic of Lithuania, gives rise to one of the requirements for the legal regulation of state service, i.e. there must be equal competition between persons entering state service, which implies that persons entering state service must be assessed on the basis of their knowledge and skills necessary to perform the respective functions of a state servant and that regard must be paid to the imperatives, which stem from Article 29 of the Constitution, in relation to the equality of the rights of persons and non-discrimination and non-granting of privileges on the grounds *expressis verbis* specified in the Constitution or any other constitutionally unjustifiable grounds.

The duty of the state to prevent the abuse of power and corruption in state service

The Constitutional Court's ruling of 18 April 2019

... the Constitution, *inter alia*, the provision of Paragraph 3 of Article 5 thereof that state institutions serve the people, Paragraph 1 of Article 33 thereof, the constitutional concept of state service, and the constitutional principles of transparency and publicity of state service give rise to the duty of the state to take all possible measures, *inter alia*, in order that corruption and the abuse of power in state service be prevented.

In this context, it should be noted that corruption as a social phenomenon has negative material and moral effect on the political and economic system of the state; it damages, *inter alia*, the reputation of state servants and officials, undermines the authority of institutions in which they work and the authority of all of state service, encourages disrespect for laws, creates the preconditions for violating human rights, and undermines the trust of the public in the state, its institutions, democratic government of the state, and law; thus, corruption destroys the constitutional foundations of a democratic state under the rule of law. In addition, the entrenched existence of corruption encourages such conduct of persons working in state and municipal institutions that does not comply with the powers conferred on them or the standards of conduct that are laid down in legal acts and encourages such conduct that is intended to benefit these persons themselves or others to the detriment of the interests of the state as a whole or the interests of separate persons.

The application of legal responsibility to state servants (officials) for the committed violations of law, *inter alia*, misconduct in office, in order to prevent the abuse of power and corruption in state service

The Constitutional Court's ruling of 18 April 2019

... public and democratic control over the activity of state servants and decisions adopted by them is an important condition for the trust of society in the state and its law; the responsibility of a state servant for the violations of law committed while in state service must be established by law (ruling of 13 December 2004). Under the Constitution, the legislature has the duty to regulate state service relationships, and the system of state service should function in such a manner that not only responsibility

would be established for violations committed while in state service, but also persons who have committed violations while in state service would actually be held liable (ruling of 13 August 2007).

The Constitutional Court held in its rulings of 25 May 2004 and 13 December 2004 that, in order that citizens could reasonably trust state officials and that it would be possible to ascertain that all state institutions and all state officials follow the Constitution and law and obey them, and that those who do not obey the Constitution and law would not hold the office for which the trust of citizens is needed, it is necessary to ensure public democratic control over the activity of state officials and their accountability to society, including, *inter alia*, the possibility of removing from office those state officials who violate the Constitution and law, who bring their personal interests or the interests of a certain group above the public interests, or who bring discredit on state authority by their actions.

... a person who has exercised his/her right, established in Paragraph 1 of Article 33 of the Constitution, to enter state service must be loyal to the state and work in such a way that his/her loyalty to the state and his/her reliability would not give rise to any doubts, that citizens could reasonably trust in state servants (officials), that state service would be qualified and capable of performing the tasks assigned to it, *inter alia*, in preventing the abuse of power and corruption in state service.

At the same time, it needs to be noted that, in order to ensure the proper functioning of state service, its transparency and publicity, under the Constitution, *inter alia*, Paragraph 1 of Article 33 thereof, and the constitutional principle of a state under the rule of law, the prevention of the manifestations of corruption or acts of a corrupt nature in state service is one of the constitutionally important objectives of the state.

Thus, if a state servant (official) possibly commits criminal acts or other acts that are contrary to law, *inter alia*, misconduct in office, he/she, under the Constitution, *inter alia*, Article 22 and Paragraph 1 of Article 33 thereof, and the constitutional principle of a state under the rule of law, may be subject to state coercive measures, which have a certain effect on his/her conduct while simultaneously limiting the exercise, *inter alia*, of his/her right to the protection of private life or the right to enter state service, in order to reach the constitutionally important objectives, *inter alia*, to ensure the transparency and publicity of state service.

Thus, under the Constitution, *inter alia*, Paragraph 1 of Article 33 thereof, and the constitutional principle of a state under the rule of law, it is not allowed to establish such a legal regulation under which a state servant (official) who fails to comply with the constitutionally justifiable requirements laid down in the Constitution and other legal acts with respect to state service as a system and persons working in it could escape legal responsibility; the law must lay down the respective legal measures, i.e. the responsibility of the state servant (official) for the violations committed by him/her, including misconduct in office; one of the sanctions established by law for misconduct in office may be the dismissal of the state servant (official) from office. Otherwise, without the establishment of the possibility of applying the respective legal responsibility to such a state servant (official), a situation that would not be tolerated under the Constitution would be created, i.e. the preconditions would be created for working in state service for such persons who do not comply with the requirements arising from the Constitution, i.e. such requirements as the proper performance of their duties in compliance with the Constitution and law, loyalty to the State of Lithuania and its constitutional order, the adoption of transparent and reasoned decisions, the avoidance of conflicts between public and private interests, and the non-abuse of office.

... under the Constitution, *inter alia*, Paragraph 1 of Article 33 thereof, as well as the constitutional concept of state service and the constitutional principle of a state under the rule of law, in order to achieve the constitutionally important objectives – ensuring the proper functioning of state service as well as its transparency and publicity, preventing, *inter alia*, the abuse of power and corruption in state service, detecting criminal and other unlawful acts, *inter alia*, misconduct in office, including that of a corrupt nature, that are possibly being committed or have been committed by a state servant (official) and are incompatible with the said requirements, arising from the Constitution, for state service as a system and for state servants (officials), and creating the preconditions for properly applying, to the persons who commit violations in state service, legal responsibility as a public form of control over servants (officials) of a democratic state and their accountability to society – information secretly collected by other authorised

state institutions for criminal justice or other lawful purposes about persons may also be used in the cases and according to the procedure established by law; the use of such information can not only have a certain effect on the conduct of the state servant (official), but it can also interfere, *inter alia*, with his/her private life.

The right of state servants (officials) to apply to a court for the defence of their rights violated as a result of the application of official liability

The Constitutional Court's ruling of 18 April 2019

... the right of a state servant (official), which arises from the Constitution, *inter alia*, Paragraph 1 of Article 30 thereof, and the constitutional principle of a state under the rule of law, to apply to a court regarding the defence of his/her rights violated as a result of the application of official liability must be real, i.e. the person in question must have the real possibilities of effectively defending, under judicial procedure, his/her violated rights against, in his/her opinion, the unlawful actions of state (municipal) institutions and/or against the abuse of the powers granted to them in the course of the application of state coercive measures, *inter alia*, in secretly collecting information (data) about the person and in using this information for the purposes of the investigation of misconduct in office; such a person has the right to defend his/her violated rights and legitimate interests effectively, irrespective of whether or not they are directly enshrined in the Constitution.

It should also be noted that the right of a state servant (official), which arises from the Constitution, *inter alia*, Paragraph 1 of Article 30 thereof, and the constitutional principle of a state under the rule of law, to apply to a court regarding the defence of his/her rights violated as a result of the application of official liability also implies his/her right to the due court process and a fair court decision. During the consideration of a dispute before a court, it is necessary to ensure the right of the state servant (official) to have full access to all the material, data, or information used in the investigation of the misconduct in office, *inter alia*, the information that has been secretly collected about him/her in the course of applying state coercive measures and, in accordance with the procedure and under the conditions established by law, has been declassified and transferred for use for the purposes of the investigation of misconduct in office; in addition, it is necessary to ensure the right of the state servant (official) to have access to the evidence used in the case; moreover, the state servant (official) has the right to provide explanations, to challenge the lawfulness or authenticity of the evidence or other material used in the investigation of the misconduct in office, to challenge the necessity and proportionality of such use, as well as to challenge all the factual and legal circumstances relating to the imposition of an official penalty. In the court proceedings, the state servant (official) must have the right to defend himself/herself effectively, *inter alia*, to have his/her representative, and the state servant (official) must be given sufficient time and possibilities for properly preparing for defence.

A court (judge), while performing the duty to administer justice, arising from Paragraph 1 of Article 109 of the Constitution, must also assess whether the use of the above-mentioned declassified information in investigating misconduct in office, for which the person may be dismissed, *inter alia*, from the position in state service, has violated the constitutional rights of the state servant (official), *inter alia*, the right to the protection of the inviolability of private life and correspondence, which is ensured by Article 22 of the Constitution, and the right to enter state service on equal terms, which is consolidated in Paragraph 1 of Article 33 thereof.

At the same time, it needs to be mentioned that, under the Constitution, *inter alia*, Paragraph 1 of Article 30 and Article 109 thereof, and the constitutional principle of a state under the rule of law, a court must, in each concrete case, provide clear and sufficient legal arguments and reasons for its decision.

[...]

... under Article 109 of the Constitution, it is not allowed to establish any such limitations that would deny the powers of a judge and a court to administer justice properly, *inter alia*, would hinder the adoption of a fair and reasoned decision in a case. Thus, when settling a dispute regarding the imposition of an official penalty, a court (judge) must, in each case, fully assess all the material, data, or information used

in investigating misconduct in office. The court (judge) must, in each case, decide whether information that has been collected about a person secretly in the manner established in laws and has been declassified in accordance with the procedure laid down in legal acts and transferred, *inter alia*, for use for the purposes of investigating the misconduct in office committed by the said person can be considered evidence in the concrete case, whether such information complies with the requirements for the lawfulness and credibility of evidence, and whether such use is necessary in a democratic society and is in line with the principle of proportionality; at the same time, the state servant (official) must be afforded effective protection against the possible arbitrariness of the authorities and the real possibility of defending himself/herself regarding his/her possibly violated rights and freedoms, *inter alia*, his/her right to the inviolability of private life and correspondence, which is protected by Article 22 of the Constitution, and his/her right to enter state service on equal terms, which is consolidated in Paragraph 1 of Article 33 thereof, when challenging, *inter alia*, the lawfulness, necessity, and proportionality of the use of declassified information as evidence in the investigation of his/her misconduct in office, which includes the duty of the court (judge) to assess whether, in this concrete case, the pursued legitimate objectives could be achieved by other less restrictive measures.

[...]

... under the Constitution, *inter alia*, the constitutional principle of a state under the rule of law, among others, the imperatives of justice and proportionality, which arise from this principle, the constitutional right of a state servant (official) to apply to a court does not deny the duty of the state, arising from the Constitution, to properly investigate instances of misconduct in office and to apply official liability to those state servants (officials) who perform the actions, *inter alia*, commit misconduct in office, including of a corrupt nature, that are incompatible with the requirements stemming from the Constitution for state service as a system and for persons working in state service.

[...]

Thus, under the Constitution, *inter alia*, Paragraph 1 of Article 30 and Article 109 thereof, and the constitutional principle of a state under the rule of law, in administering justice and adjudicating on a dispute regarding an imposed official penalty, *inter alia*, dismissal from state service, a court (judge) must, in each situation, consider cases in a fair and objective manner and adopt reasoned and well-founded decisions, i.e. fully assess the balance of interests involved in the proceedings: on the one hand, the court (judge) must assess the legitimate aim of the state to properly apply official liability to state servants (officials) who have violated the constitutional requirements raised for state service and state servants and, on the other hand, assess the lawfulness of the investigation into misconduct in office, *inter alia*, whether the pursued legitimate objectives could be reached in the particular case by other less restrictive measures and whether the constitutional rights or freedoms of the person were violated during such a procedure, *inter alia*, his/her right to the protection of private life or his/her right to enter state service, among others, by using, in the manner prescribed by law and for the purposes of investigating the misconduct in office committed by him/her, information secretly collected about the person by other authorised state authorities and declassified in the manner established in legal acts where the said information concerns an act with the characteristics of a corruption criminal act. In this context, it needs to be noted that ... under the Constitution, the court (judge) is not and cannot be merely a passive observer of the proceedings; the court (judge) must, in each case, take all possible measures to establish the truth in the case and reach a fair and objective decision, while ensuring the implementation of the law expressed in the Constitution, laws, and other legal acts and guaranteeing the supremacy of law and the protection of human rights and freedoms.

At the same time, it also needs to be noted that, under the Constitution, a state servant (official) must be afforded effective protection against the possible arbitrariness of the authorities in investigating his/her misconduct in office and the real possibility of making use of the judicial protection of his/her constitutional rights and freedoms possibly violated during such an investigation, *inter alia*, his/her right to the protection of private life and correspondence, which is guaranteed by Article 22 of the Constitution, and the right to enter state service on equal terms, which is enshrined in Paragraph 1 of Article 33 of the Constitution, when challenging, *inter alia*, the lawfulness, necessity, and proportionality of the use of declassified criminal

intelligence information ... as evidence in the course of investigating the misconduct in office of a corrupt nature committed by him/her.

The requirement to ensure the due process of law in the course of the procedure for investigating misconduct in office committed by state servants (officials)

The Constitutional Court's ruling of 18 April 2019

... the Constitution, *inter alia*, Paragraph 1 of Article 33 thereof, the constitutional concept of state service, the constitutional principle of a state under the rule of law, and the constitutional imperatives of justice and reasonableness give rise to the requirement for the legislature that the procedure for imposing official penalties, *inter alia*, the procedure for investigating the misconduct in office committed by a state servant (official), be also regulated in a manner that ensures the due process. The guarantees of the due process of law during the procedure for investigating misconduct in office also include the ensuring of the constitutional rights of a public servant (official), *inter alia*, the right to the protection of the inviolability of private life and correspondence, which is guaranteed by Article 22 of the Constitution, and the right to enter state service on equal terms, which is consolidated in Paragraph 1 of Article 33 thereof; the said guarantees also create the preconditions for preventing the unlawful actions of state (municipal) institutions and/or the abuse of the powers granted to them when they apply state coercive measures, *inter alia*, official liability, including in cases where information secretly collected, in the cases and in accordance with the procedure established in laws, by other authorised state institutions is used in investigating misconduct in office of a corrupt nature, for which the most severe official penalty – the dismissal of the state servant (official) from office – may be applied.

A state servant (official) has the right to be informed of the beginning of an investigation into misconduct in office; he/she has the right, at the beginning of an investigation into misconduct in office and during all this procedure, to have full access to any material, data, or information used in the investigation, *inter alia*, the information that has been secretly collected about him/her in the course of applying state coercive measures and, in accordance with the procedure established in laws, has been declassified and transferred for use for the purposes of the investigation of misconduct in office; he/she also has the right to have full access to evidence used in this investigation; in addition, he/she has the right to be heard and to present his/her explanations during this procedure when the respective decisions are taken regarding him/her; the state servant (official) has the right to challenge the material or evidence used in the case concerning his/her misconduct in office, to question the lawfulness of such use, to demand that the evidence that he/she considers inadmissible be not used, and to challenge all the factual and legal circumstances relating to the imposition of an official penalty. During the procedure for investigating misconduct in office, it is necessary to ensure the right of the state servant (official) to effective defence, *inter alia*, the right to have his/her representative.

[...]

... as mentioned before, under the Constitution, the due process of the investigation of misconduct in office is when, already during this process, a state servant (official) has the real possibilities of defending himself/herself against the raised suspicions that he/she has committed misconduct in office; he/she has the right, *inter alia*, to have his/her representative, to be informed of the opening of the investigation of misconduct in office, including the right to have access to the available information on the allegedly committed misconduct in office, as well as the right to submit his/her written explanation regarding the said misconduct in office, to participate in the on-the-spot verification of the factual data relating to the misconduct in office, and, upon the completion of the investigation of the misconduct in office, to have access to the reasoned conclusion on the investigation results and any other material used in the course of the investigation of the misconduct, including the right to have access to all declassified criminal intelligence information, used in the investigation, about an act with the characteristics of a corruption criminal act ...

[...]

... under the Constitution, *inter alia*, Paragraph 1 of Article 33 thereof, and the constitutional principle of a state under the rule of law, the legislature should take appropriate measures to consolidate in a law the essential guarantees of the protection of human rights and freedoms in the process of investigating misconduct in office.

The powers of state institutions in investigating the violations of law possibly committed by state servants (officials) to use declassified information collected secretly by other state institutions about the said state servants (officials)

The Constitutional Court's ruling of 18 April 2019

In its ruling of 15 March 2017, interpreting the requirements arising, *inter alia*, from Article 31 of the Constitution and from the constitutional principle of a state under the rule of law, and interpreting the right of a person to defence and to the due process of law, the Constitutional Court also noted that, if investigations and hearings of criminal cases in which persons are suspected and accused of having committed a certain crime do not establish (prove) any characteristics of the body of this crime, but detect the characteristics of other criminal acts or of other violations of law, the state institutions and officials are not released from the duty to investigate them and, if there are grounds, to bring the persons to the respective legal responsibility.

Thus ... under the Constitution, *inter alia*, Paragraph 1 of Article 33 thereof, the constitutional concept of state service, and the constitutional principle of a state under the rule of law, among other things, the imperatives of lawfulness, necessity in a democratic society, and proportionality, which arise from the said principle, if the application by the state of the respective coercive measures, established by law, to a state servant (official) or another person, in particular measures designated for the investigation of criminal acts, does not establish the characteristics (as they have not been proved) of the body of a crime, but detects the characteristics of other possibly committed acts that are contrary to law, *inter alia*, misconduct in office, including that of a corrupt nature, which are incompatible with the requirements stemming from the Constitution for state servants (officials) (as, for instance, the proper performance of their duties in compliance with the Constitution and law, the avoidance of conflicts between public and private interests, the non-abuse of office, and the adoption of transparent and reasoned decisions), or identifies state servants (officials) who have possibly committed them, state institutions and officials have the duty to properly investigate such violations of law and, if there are grounds, to bring the said state servants (officials) to respective legal responsibility, *inter alia*, by using, in the cases and according to the procedure established by law, information collected secretly about them by other authorised state institutions, which discloses the above-mentioned violations of law, *inter alia*, misconduct in office, possibly committed by them.

Such use of this information for investigating misconduct in office is based on the constitutionally important objectives of the protection of the public interest; it aims to protect the interests of the state, state service, and of all society, to prevent, *inter alia*, corruption in state service, to strengthen the credibility and responsibility of state service and every state servant (official), and to guarantee that only such persons hold the positions of state servants (*inter alia*, statutory positions) who meet the high requirements established by law, are loyal to the State of Lithuania, and are of good repute.

[...]

Otherwise, without the establishment of the possibility of applying official liability to a state servant (official), *inter alia*, by using information collected about him/her by other authorised state institutions in the cases and according to the procedure established by law, a situation that would not be tolerated under the Constitution would be created – it would not be ensured that persons who have committed misconduct in office would actually be brought to official liability, i.e. the preconditions would be created for working in state service for such persons who do not comply with the requirements arising from the Constitution, such as the proper performance of their duties in compliance with the Constitution and law, loyalty to the State of Lithuania and its constitutional order, the adoption of transparent and

reasoned decisions, the avoidance of conflicts between public and private interests, and the non-abuse of office.

The presumption of innocence in investigating misconduct in office possibly committed by state servants (officials)

The Constitutional Court's ruling of 18 April 2019

The presumption of innocence is ensured in Paragraph 1 of Article 31 of the Constitution. The Constitutional Court, when interpreting the presumption of innocence, has held that it is a fundamental principle of the administration of justice in criminal proceedings and one of the most important guarantees of human rights and freedoms (*inter alia*, the rulings of 12 April 2001 and 24 February 2017). However, the provision of Paragraph 1 of Article 31 of the Constitution ... must be assessed in the context of other provisions of the Constitution; therefore, it has a broader content and must not be linked only to criminal legal relationships (rulings of 29 December 2004 and 24 February 2017). The presumption of innocence is inseparably linked to respect for and the protection of other constitutional human rights and freedoms, as well as acquired rights (ruling of 7 July 2011).

... the presumption of innocence must also be ensured when information collected secretly, in accordance with the procedure established in laws, by other authorised state institutions is transferred for use and/or is used for the purposes of investigating misconduct in office; in this context, it should be mentioned that, in itself, the fact of transferring the said information cannot serve as a basis, in the absence of a proper and thorough investigation of the possibly committed misconduct in office, for considering that the state servant (official) has committed misconduct in office. Such transferred information either may serve as a basis for launching an investigation into a particular instance of misconduct in office or may be used for investigating such misconduct, i.e. in order to establish (prove) the fact of misconduct in office and the circumstances in which it was committed.

... under the Constitution, in cases and under the conditions established by law, the possibility of using, for the purposes of the investigation of misconduct in office, the said declassified information collected by other authorised state institutions may not in itself be assessed as a violation of the principle of the presumption of innocence.

4.4. THE RESPONSIBILITY OF THE AUTHORITIES TO SOCIETY.

THE CONSTITUTIONAL RESPONSIBILITY OF THE HIGHEST-RANKING STATE OFFICIALS

Impeachment (Article 74 of the Constitution)

The Constitutional Court's ruling of 11 May 1999

In the Lithuanian legal system, impeachment is a constitutional institution. Article 74 of the Constitution prescribes: "The President of the Republic, the President and justices of the Constitutional Court, the President and justices of the Supreme Court, the President and judges of the Court of Appeal, as well as any Members of the Seimas, who grossly violate the Constitution or breach their oath, or are found to have committed a crime, may be removed from office or have the mandate of a Member of the Seimas revoked by a 3/5 majority vote of all the Members of the Seimas. This shall be performed according to the procedure for impeachment proceedings, which shall be established by the Statute of the Seimas."

Some other articles of the Constitution are also important to the impeachment institution: Item 5 of Article 63, Paragraph 2 of Article 86, Item 5 of Article 88, Paragraph 1 of Article 89, Article 105, Item 5 of Article 108, and Article 116. The norms of these articles serve as the constitutional grounds for the impeachment institution.

The following elements of impeachment are established in Article 74 of the Constitution: (1) impeachment as a parliamentary procedure may be applied only to the President of the Republic, the President and justices of the Constitutional Court, the President and justices of the Supreme Court, the President and judges of the Court of Appeal, as well as members of the Seimas; (2) impeachment

proceedings may be instituted only for gross violations of the Constitution, a breach of the oath, or when the aforementioned persons are found to have committed a crime; (3) the objective of impeachment proceedings is to decide the question of the constitutional responsibility of the said persons; (4) impeachment is carried out by the Seimas; (5) to remove a person from office or to revoke his/her mandate of a member of the Seimas, a 3/5 majority vote of all the members of the Seimas is necessary.

Under Article 74 of the Constitution, the establishment of the procedure for impeachment proceedings is also within the competence of the Seimas: ...

[...]

The provision “according to the procedure for impeachment proceedings, which shall be established by the Statute of the Seimas” presumes the discretion of the Seimas in this sphere. Several grounds for impeachment are established in Article 74 of the Constitution; therefore, the Statute of the Seimas may establish such a procedure for impeachment that would take account of the differences in the constitutional grounds for impeachment. The conformity of the procedure for impeachment with the Constitution depends on whether the Seimas, establishing the particularities of impeachment proceedings, diverges from the constitutional concept of the said procedure.

... the Constitution does not obligate the Seimas to design every particular procedure for impeachment under a single model: other procedures for impeachment may also be established in the Statute of the Seimas; such procedures may apply in specific cases, including those when the actual circumstances of a case are already established by a court.

It needs to be noted that the possibility of regulating the particularities of impeachment proceedings is also determined by the provision of Paragraph 2 of Article 62 of the Constitution, by which members of the Seimas may not be held criminally liable without the consent of the Seimas. The Constitution provides for analogous guarantees for the President of the Constitutional Court and its justices, the President of the Supreme Court and its justices, and the President of the Court of Appeal and its judges.

Impeachment as a parliamentary procedure is only applied to the persons listed in Article 74 of the Constitution. ...

Under Article 74 of the Constitution, one of the grounds for impeachment is “found to have committed a crime”. The phrase “found to have committed a crime” of Article 74 of the Constitution presumes that it transpires that a crime was committed and that the official who committed it was identified. ...

[...]

... In a state under the rule of law, every branch of power (legislative, executive, or judicial) fulfils the functions vested in it and carries out its competence. Paragraph 1 of Article 109 of the Constitution provides that, in Lithuania, justice is administered only by courts, whereas, under Article 74 of the Constitution, the Seimas is commissioned to carry out impeachment. When voting on impeachment takes place at the Seimas, the question of the constitutional responsibility, but not that of the criminal responsibility of a person is decided. The removal of a person from office or the revocation of his/her mandate of a member of the Seimas through impeachment proceedings because of the suspicion that he/she has committed a crime is not binding on a court. In its turn, the independence of legislative power and judicial power established in the Constitution determines the fact that a judgment handed down by a court is not binding on the Seimas that adopts a decision on the constitutional responsibility of a person. Otherwise, the constitutional principle of the separation of powers would be violated.

... Giving its consent to hold a person criminally liable, the Seimas also decides that the actual circumstances of the case will be investigated by the judicial institutions – the interrogation and a court – but not by any special investigation commission formed by the Seimas. This means that, if a court recognises that the said person is guilty of committing a crime, it will not be necessary later to submit a separate motion to institute impeachment because of the commission of a crime. It needs to be noted that a formal statement of charges as an independent action, when this is done by members of the Seimas themselves, is not, in this case, a necessary element of impeachment proceedings; however, this would be in line with the constitutional practice of many states.

The constitutional concept of impeachment implies that the objective of impeachment proceedings is the decision of the question of the constitutional responsibility of the persons listed in Article 74 of the Constitution. It is the Seimas that decides on the constitutional sanction no matter whether it conducts the full impeachment proceedings or entrusts the interrogation and a court with the establishment of the actual circumstances of a case. Even in cases where a court has passed a convicting judgment, the constitutional sanction, i.e. the removal of a person from office or the revocation of his/her mandate of a member of the Seimas, is not applied of its own accord. A person is removed from office or his/her mandate of a member of the Seimas is revoked when the qualified majority, i.e. 3/5 of all the members of the Seimas, vote for this.

The responsibility of the authorities to society; impeachment (Article 74 of the Constitution)

The Constitutional Court's conclusion of 31 March 2004

In a democratic state under the rule of law, all state institutions and all officials must follow the Constitution and law. The responsibility of the authorities to society is inseparable from the constitutional principle of a state under the rule of law; the said responsibility is constitutionally consolidated by stipulating that state institutions serve the people, that the scope of powers is limited by the Constitution, that state officials who violate the Constitution and laws, who raise personal or group interests above the interests of society, or bring discredit on state power by their actions may be removed from office under the procedure established in laws.

Impeachment is a special procedure provided for in the Constitution, when the issue of the constitutional responsibility of the high state officials indicated in Article 74 of the Constitution is decided, i.e. their removal from office for the following actions provided for in the Constitution: a gross violation of the Constitution, a breach of the oath, or the commission of a crime.

Under the Constitution, the President of the Republic is among those state officials who may be removed from office through impeachment proceedings.

[...]

It needs to be noted that the possibility consolidated in the Constitution to remove the President of the Republic from office through impeachment proceedings is a form of public and democratic control over the activities of the President of the Republic, a manner of the constitutional responsibility of the President of the Republic before the Nation, and one of the means of the self-defence of democratic civil society against the abuse of authority by the President of the Republic. Under Article 74 of the Constitution, it is permitted to institute impeachment proceedings against the President of the Republic only for a gross violation of the Constitution, a breach of the oath, or if he/she is found to have committed a crime; only the Seimas may remove the President of the Republic from office, when this is done in accordance with the procedure established in the Statute of the Seimas; the President of the Republic is removed from office only when not less than 3/5 of all the members of the Seimas vote for this.

The powers of the Seimas and of the Constitutional Court in impeachment proceedings (Item 4 of Paragraph 3 of Article 105 and Paragraph 3 of Article 107 of the Constitution)

The Constitutional Court's conclusion of 31 March 2004

Under Item 4 of Paragraph 3 of Article 105 of the Constitution, the Constitutional Court presents a conclusion on whether the concrete actions of members of the Seimas and state officials against whom an impeachment case has been instituted are in conflict with the Constitution. ... under Article 74 of the Constitution, the President of the Republic is among those state officials who may be removed from office through impeachment proceedings.

Paragraph 3 of Article 107 of the Constitution stipulates that, on the basis of the conclusions of the Constitutional Court, the Seimas takes a final decision on the issues specified in Paragraph 3 of Article 105 of the Constitution.

While disclosing the content of the legal regulation established in Item 4 of Paragraph 3 of Article 105 and Paragraph 3 of Article 107 of the Constitution, consideration must be given to the provisions of Article 74 of the Constitution, the provisions of Paragraph 2 of Article 5 of the Constitution, and the constitutional principles of the separation of powers and of a state under the rule of law.

... the Constitution is an integral act ... all provisions of the Constitution are interrelated and constitute a harmonious whole and ... it is not permitted to interpret any norm of the Constitution by disregarding other provisions of the Constitution. In interpreting the Constitution, the linguistic method of interpretation alone may not be applied: it is necessary to make use of the systemic, logical, teleological, and other methods of interpreting law.

It has ... been mentioned that, under Item 4 of Paragraph 3 of Article 105 of the Constitution, the Constitutional Court presents a conclusion on whether the concrete actions of the President of the Republic against whom an impeachment case has been instituted are in conflict with the Constitution; Paragraph 3 of Article 107 of the Constitution stipulates that, on the basis of the conclusions of the Constitutional Court, the Seimas takes a final decision on the issues specified in Paragraph 3 of Article 105 of the Constitution.

Interpreting the said provisions of the Constitution only linguistically and in isolation from other provisions of the Constitution that consolidate the institution of impeachment and the powers of both the Seimas and the Constitutional Court in impeachment proceedings, it might appear that it is possible to assert that, purportedly, the Constitution provides for the legal regulation whereby the Constitutional Court presents a conclusion on whether the concrete actions of the President of the Republic against whom an impeachment case has been instituted are in conflict with the Constitution, while the Seimas takes a final decision whether the actions of the President of the Republic are in conflict with the Constitution.

However, such an interpretation of the aforesaid provisions of the Constitution would be constitutionally groundless.

It needs to be noted that the principle of the separation of powers, which is consolidated in the Constitution, means, *inter alia*, that, if the Constitution directly establishes the powers of a concrete state institution, no state institution may take over such powers from another state institution, or transfer or waive them; such powers may not be changed or limited by means of a law.

Under Item 4 of Paragraph 3 of Article 105 of the Constitution, the Constitutional Court presents a conclusion on whether the concrete actions of the President of the Republic against whom an impeachment case has been instituted are in conflict with the Constitution. Paragraph 2 of Article 107 of the Constitution provides that the decisions of the Constitutional Court on the issues assigned to its competence by the Constitution are final and not subject to appeal. The presentation of the conclusion specified in Item 4 of Paragraph 3 of Article 105 of the Constitution is one of such issues that, under the Constitution, fall only within the competence of the Constitutional Court. Thus, under the Constitution, a conclusion on whether the concrete actions of the President of the Republic against whom an impeachment case has been instituted are in conflict with the Constitution is final and not subject to appeal.

It has been mentioned that, under Paragraph 3 of Article 107 of the Constitution, on the basis of the conclusions of the Constitutional Court, the Seimas takes a final decision on the issues specified in Paragraph 3 of Article 105 of the Constitution. Assessing the interrelation of the provisions of Item 4 of Paragraph 3 of Article 105 and Paragraph 3 of Article 107 of the Constitution, it is impossible to disregard the provisions of Article 74 of the Constitution, according to which the Seimas may, by a 3/5 majority vote of all the members of the Seimas, remove the President of the Republic from office for a gross violation of the Constitution, a breach of the oath, or if he/she is found to have committed a crime.

The provision of Paragraph 3 of Article 107 of the Constitution that, on the basis of the conclusions of the Constitutional Court, the Seimas takes a final decision on the issues set forth in Paragraph 3 of Article 105 of the Constitution, means that, in cases where impeachment proceedings are instituted against the President of the Republic for a gross violation of the Constitution, the Seimas has the duty to apply to the Constitutional Court and to request a conclusion on whether the actions of the President of the Republic are in conflict with the Constitution. ...

The provision of Paragraph 2 of Article 107 of the Constitution, whereby the decisions of the Constitutional Court on the issues assigned to its competence by the Constitution are final and not subject to appeal, also means that, when deciding whether or not to remove the President of the Republic from office, the Seimas may not reject, question, or change the Constitutional Court's conclusion that the concrete actions of the President of the Republic are (or are not) in conflict with the Constitution. No such powers are assigned to the Seimas by the Constitution. The Constitutional Court's conclusion that the concrete actions of the President of the Republic are in conflict (or are not in conflict) with the Constitution is binding on the Seimas insofar as the Constitution does not empower it to decide whether the conclusion of the Constitutional Court is well founded and legal – it is only the Constitutional Court that may establish the legal fact that the actions of the President of the Republic are (or are not) in conflict with the Constitution.

Under Article 74 of the Constitution, it is only the Seimas that can remove the President of the Republic from office for a gross violation of the Constitution.

Thus, the Constitution provides for the different functions of the Seimas and of the Constitutional Court in impeachment proceedings, and establishes particular powers necessary to implement these functions: the Constitutional Court decides whether the concrete actions of the President of the Republic are in conflict with the Constitution and presents a conclusion to the Seimas (Item 4 of Paragraph 3 of Article 105 of the Constitution), while the Seimas, if the President of the Republic grossly violated the Constitution, decides whether to remove the President of the Republic from office (Article 74 of the Constitution). Thus, the provision of Paragraph 3 of Article 107 of the Constitution, whereby the Seimas takes a final decision on the issues set forth in Paragraph 3 of Article 105 of the Constitution, in conjunction with the provision of Article 74 of the Constitution, according to which only the Seimas decides the issue of the removal of the President of the Republic from office through impeachment proceedings, and in conjunction with the provision of Paragraph 2 of Article 107 of the Constitution, under which the conclusion of the Constitutional Court is final and not subject of appeal, means that, under Paragraph 3 of Article 107 of the Constitution, the Seimas has the powers to decide whether to remove the President of the Republic from office, but does not have the powers to decide whether the concrete actions of the President of the Republic are in conflict with the Constitution.

It should be noted that the constitutional provision whereby only the Constitutional Court has the powers to decide (through its conclusions on the matter) whether the concrete actions of the President of the Republic are in conflict with the Constitution consolidates the guarantee for the President of the Republic that he/she will not be held constitutionally liable unreasonably. Thus, if the Constitutional Court reaches the conclusion that the actions of the President of the Republic are not in conflict with the Constitution, the Seimas may not remove the President of the Republic from office for a gross violation of the Constitution.

A gross violation of the Constitution as grounds for impeachment (Article 74 of the Constitution)

The Constitutional Court's conclusion of 31 March 2004

... under the Constitution, the Constitutional Court presents a conclusion on whether concrete actions of the President of the Republic are in conflict with the Constitution. The statement that the actions of the President of the Republic are in conflict with the Constitution also means that the President of the Republic violated the Constitution. However, not every violation of the Constitution is in itself a gross violation of the Constitution.

It needs to be emphasised that, when deciding whether the actions of the President of the Republic have grossly violated the Constitution, it is necessary to assess, in each case, the content of the concrete actions of the President of the Republic, as well as the circumstances of their performance.

In its ruling of 30 December 2003, the Constitutional Court held that the Constitution is grossly violated in all cases when the President of the Republic breaches the oath.

The Constitution would be violated grossly by the actions of the President of the Republic in cases where the President of the Republic would hold office in bad faith, would act not in the interests of the

Nation and the state but in his/her personal interests, those of individual persons or their groups, would act for other purposes and in other interests that are incompatible with the Constitution, laws, and public interests, or would knowingly fail to perform the duties established for the President of the Republic in the Constitution and laws.

... under the Constitution, only the Constitutional Court has the powers to decide whether the concrete actions of the President of the Republic are in conflict with the Constitution, thus, whether the President of the Republic violated the Constitution; the Constitution does not provide for such powers for the Seimas. The Seimas, having no powers to adopt a decision whether the President of the Republic violated the Constitution, does not have the constitutional powers to decide whether the President of the Republic grossly violated the Constitution. The establishment of a violation of the Constitution is a matter of a legal, but not political, assessment; therefore, the legal issues – the fact of a violation of the Constitution, thus, also that of a gross violation of the Constitution, can only be established by the institution of judicial power – the Constitutional Court. The interpretation that the Seimas may establish the fact of a gross violation of the Constitution would constitutionally be groundless, since this would mean that the legal issue whether the President of the Republic violated the Constitution, whether the Constitution has been violated grossly, could be decided not by the institution of judicial power – the Constitutional Court, which, as all other courts, is formed on a professional basis, but by the Seimas, an institution of state power that, by its nature and essence, is an institution of a political character, whose decisions reflect the political will of the majority of the members of the Seimas, whose decisions are based on political agreements, various political compromises, etc. It is evident that the Seimas, an institution of a political character, may not decide whether the President of the Republic violated the Constitution, whether the violation of the Constitution is a gross one, i.e. it may not decide an issue of law. Otherwise, the statement of the fact of a violation of the Constitution and that of a gross violation of the Constitution could be based on political arguments, while the constitutional responsibility of the President of the Republic might arise from the statement that the Constitution has grossly been violated where such a statement would be based on political arguments. The Constitution contains such a legal regulation whereby only the Constitutional Court has the powers to decide whether the President of the Republic violated the Constitution, and whether the violation of the Constitution is a gross one. The Seimas, any other state institution, or any state official are not granted such powers under the Constitution.

It needs to be noted that the constitutional regulation under which only the Constitutional Court has the powers to decide whether the President of the Republic grossly violated the Constitution is the constitutional guarantee for the President of the Republic that constitutional responsibility – removal from office for a gross violation of the Constitution – will not be applied against him/her unreasonably.

... under Article 74 of the Constitution, it is only the Seimas that decides whether to remove the President of the Republic from office for a gross violation of the Constitution, a breach of the oath, or when he/she is found to have committed a crime. If the grounds for impeachment are a gross violation of the Constitution, the Seimas may decide the issue of the removal of the President of the Republic from office only after receiving the conclusion of the Constitutional Court that the President of the Republic grossly violated the Constitution. This is the constitutional guarantee for the President of the Republic that constitutional responsibility will not be applied against him/her unreasonably.

It needs to be noted that, under the Constitution, during impeachment proceedings at the Seimas, neither the fact whether actions of the President of the Republic are in conflict with the Constitution nor the fact whether the President of the Republic grossly violated the Constitution is decided. Under the Constitution, this is decided exclusively by the Constitutional Court. During impeachment proceedings at the Seimas, only the question of the constitutional responsibility of the President of the Republic is decided, i.e. only the question whether to remove the President of the Republic from office for a gross violation of the Constitution. The removal of the President of the Republic from office is a constitutional sanction for a gross violation of the Constitution. It has been mentioned that, under Article 74 of the Constitution, it is only the Seimas that may adopt a decision on the application of the constitutional sanction, i.e. on the removal of the President of the Republic from office.

Impeachment proceedings in the Seimas (Article 74 of the Constitution)

The Constitutional Court's conclusion of 31 March 2004

Under Article 74 of the Constitution, the procedure for impeachment proceedings is established by the Statute of the Seimas. Article 76 of the Constitution provides that the Statute of the Seimas has the force of a law.

It needs to be noted that the Seimas has discretion in implementing the procedure for impeachment proceedings; however, it is bound by the constitutional concept of impeachment (ruling of 11 May 1999). Therefore, the procedure of impeachment proceedings established in the Statute of the Seimas must be such that fair legal proceedings would be ensured in order to properly investigate the circumstances of an impeachment case and adopt a just decision on the constitutional responsibility of a person. The norms regulating impeachment must not only create the possibility of removing a person from office, but also to ensure the rights of impeached persons.

[...]

... Under Paragraph 2 of Article 107 of the Constitution, a conclusion of the Constitutional Court is final and not subject to appeal; therefore, it is evident that the part of impeachment proceedings ... i.e. interrogation, as well as the legal norms ... regulating interrogation, may be applied only when the grounds for impeachment are not a gross violation of the Constitution or a breach of the oath, but when the grounds for impeachment are “found to have committed a crime”, and provided that there is no effective convicting court judgment in regard of an impeached person. Taking account of the fact that, under Paragraph 1 of Article 86 of the Constitution, the President of the Republic, while in office, may be neither detained nor held criminally liable, the conclusion should be drawn that interrogation as part of impeachment proceedings is possible only when the President of the Republic is held constitutionally liable on the basis established in Article 74 of the Constitution, i.e. when he/she is found to have committed a crime, also, when, on the same basis, i.e. when they are found to have committed a crime, the other subjects specified in Article 74 of the Constitution are held constitutionally liable provided that there are no effective convicting court judgments in their regard. ...

In its ruling of 11 May 1999, the Constitutional Court held that the constitutional concept of impeachment implies fair judicial proceedings in which priority is given to the protection of the rights of individuals. When guaranteeing the protection of the rights of individuals, it is necessary to pay regard to the fundamental principles of a state under the rule of law; such principles require that jurisdictional and other law-applying institutions be impartial and independent, that they seek to establish the objective truth, and that they adopt their decisions only on the grounds of law. This is possible only if the proceedings are public, the parties to the proceedings have equal rights, and the legal disputes, in particular those regarding the rights of a person, are decided by ensuring that a particular person has the right and possibility of defending those rights. In a state under the rule of law, the right of individuals to defend their rights is unquestionable. Since the Seimas, deciding the question of removing a person from office or that of revoking his/her mandate, acts as a jurisdictional institution, impeachment proceedings are subject to the same requirements. In the same ruling, the Constitutional Court noted that, when the question of constitutional or any other responsibility is decided, the aforesaid principles of a state under the rule of law are implemented through the procedural rights of a person against whom this sanction is applied and through the guarantees of such rights. The recognition of the rights of an individual is a necessary element of the rule of law. In the course of impeachment in the Seimas, it is necessary to ensure the right of a person whose constitutional responsibility is decided to take part in the proceedings and to defend himself/herself. Before adopting its decision, the Seimas must also hear the other party (*audi alteram partem*).

In view of the fact that, in the course of impeachment proceedings in the Seimas, the fact whether the concrete actions of the President of the Republic are in conflict with the Constitution or the fact whether the President of the Republic violated the Constitution grossly is not decided (under the Constitution, this can be decided only by the Constitutional Court) – in other words, only the fact whether to remove the President of the Republic from office for a gross violation of the Constitution is decided during

impeachment proceedings in the Seimas; therefore, the conclusion should be drawn that, in the course of impeachment proceedings in the Seimas, only the evidence that confirms or denies the necessity to remove the President of the Republic from office for a gross violation of the Constitution is investigated; however, the evidence that confirms or denies the fact that the President of the Republic performed the actions by which he/she grossly violated the Constitution is not investigated during impeachment proceedings in the Seimas. ...

The Constitutional Court notes that the right of the President of the Republic, the issue of whose constitutional responsibility is decided in accordance with impeachment proceedings in the Seimas, to participate in the proceedings, to give explanations, and to defend himself/herself must not be restricted. This right must be ensured.

The powers of the Constitutional Court to investigate and assess evidence in impeachment proceedings

The Constitutional Court's conclusion of 31 March 2004

Under the Constitution, it is only the Constitutional Court that has the powers to decide whether the concrete actions of the President of the Republic against whom an impeachment case has been instituted are in conflict with the Constitution, and whether the President of the Republic has grossly violated the Constitution. Thus, the constitutional duty is established for the Constitutional Court to investigate whether the President of the Republic performed the concrete actions pointed out in the charge brought against him/her, to assess whether these actions are in conflict with the Constitution and whether the Constitution was grossly violated. When investigating whether the concrete actions of the President of the Republic are in conflict with the Constitution and whether the Constitution was grossly violated, the Constitutional Court investigates and assesses the evidence provided to the Constitutional Court along with the inquiry, as well as all other evidence received in the course of the investigation of the case at the Constitutional Court, where the said evidence confirms or denies the fact that the President of the Republic performed the concrete actions specified in the inquiry, or confirms or denies the fact that these actions are in conflict with the Constitution or the fact that the Constitution was grossly violated.

The state institutions participating in impeachment proceedings (Article 74 and Item 4 of Paragraph 3 of Article 105 of the Constitution)

The Constitutional Court's ruling of 15 April 2004

... impeachment is a special parliamentary procedure provided for in the Constitution when the issue of the constitutional responsibility of the President of the Republic, the President and justices of the Constitutional Court, the President and justices of the Supreme Court, the President and judges of the Court of Appeal, or of members of the Seimas is decided. Article 74 of the Constitution provides that only the Seimas may remove these persons from office or revoke the mandate of a member of the Seimas.

It needs to be noted that, under the Constitution, in order that constitutional responsibility would be applied reasonably, in cases where impeachment proceedings against the President of the Republic, the President and justices of the Constitutional Court, the President and justices of the Supreme Court, the President and judges of the Court of Appeal, or members of the Seimas are instituted because of a gross violation of the Constitution or a breach of the oath, the Seimas must apply to the Constitutional Court, requesting a conclusion whether concrete actions of a member of the Seimas or those of a state official against whom an impeachment case has been instituted are in conflict with the Constitution. The Seimas may decide the issue of removing this person from office or that of the revocation of the mandate of a member of the Seimas only after it receives the conclusion of the Constitutional Court that the concrete actions of a member of the Seimas or those of a state official against whom an impeachment case has been instituted are in conflict with the Constitution (Item 4 of Paragraph 3 of Article 105 of the Constitution).

Thus, under the Constitution, only two institutions of state power have the powers in impeachment proceedings, i.e. the Seimas and the Constitutional Court. According to the Constitution, the Constitutional

Court decides (presents a conclusion) whether the concrete actions of a member of the Seimas or those of a state official against whom an impeachment case has been instituted are in conflict with the Constitution and whether the Constitution has been violated grossly by these actions, whereas the Seimas decides, under the procedure for impeachment proceedings, whether to remove such a person from office (to revoke the mandate of a member of the Seimas).

... under Article 74 of the Constitution, one of the grounds for impeachment is “found to have committed a crime”. It should be noted that it is permitted to stipulate in the Statute of the Seimas, while paying regard to the concept of impeachment consolidated in the Constitution, that, in cases where the fact of the commission of a crime is clear, the Seimas, when it conducts impeachment, may state such a fact without an investigation carried out by legal institutions. In its 11 May 1999 ruling, the Constitutional Court stated that “the removal of a person from office or the revocation of his/her mandate of a member of the Seimas through impeachment proceedings because of the suspicion that he/she has committed a crime is not binding on a court”. It also needs to be noted that, in cases where the fact of the commission of a crime is not clear, the Seimas, under the Constitution, may not conduct impeachment on the grounds of the fact of the commission of a crime as long as a convicting court judgment has not been adopted and gone into effect.

Thus, the Constitution consolidates such a concept of impeachment where the Seimas conducts impeachment, while the Constitutional Court presents a conclusion on whether the concrete actions of a member of the Seimas or those of a state official against whom an impeachment case has been instituted are in conflict with the Constitution. No other institutions are granted powers by the Constitution to participate in the conduct of impeachment.

The initiation of impeachment (Article 74 of the Constitution)

The Constitutional Court's ruling of 15 April 2004

It has been mentioned that, under the Constitution, the Seimas conducts impeachment, while the Constitutional Court presents a conclusion on whether concrete actions of a state official or a member of the Seimas against whom an impeachment case has been instituted are in conflict with the Constitution. No other institutions are granted powers by the Constitution to participate in the conduct of impeachment.

The first stage of impeachment proceedings is the initiation of impeachment. Article 74 of the Constitution provides that the procedure for impeachment proceedings is established by the Statute of the Seimas. Under Article 76 of the Constitution, the structure and procedure of activities of the Seimas are established by the Statute of the Seimas. ... according to the Constitution, impeachment proceedings take place in the Seimas and no state institution is permitted to interfere with the constitutional powers of the Seimas to conduct impeachment if this is not provided for in the Constitution. This implies that impeachment may be initiated only in the Seimas, that, it should be emphasised, the initiative of impeachment may come only from members of the Seimas. It needs to be noted that, when account is taken of the importance of the constitutional institute of impeachment as a means of self-defence of the civil Nation, where the said means is applied by the Seimas, also of the fact that impeachment may be applied against high state officials, only a sufficiently large group of members of the Seimas may have the right to initiate impeachment proceedings. On the other hand, if a too large number of members of such a group of members of the Seimas were established, the democratic nature of the impeachment institution would be denied.

It needs to be noted that, if, when laying down the initiation of impeachment, the Statute of the Seimas stipulated that impeachment may be initiated not in the Seimas, that the initiative of impeachment may rise not from members of the Seimas, that other state institutions may propose that impeachment be instituted, then the constitutional concept of impeachment would be disregarded and the constitutional prerogative of the Seimas to conduct impeachment would be interfered with.

In this context, it should be noted that the legal regulation of the initiation of impeachment in the Statute of the Seimas may, according to the Constitution, have particularities in cases where a convicting

court judgment is adopted and is effective in regard of a certain person. In its ruling of 11 May 1999, the Constitutional Court held that such a regulation of impeachment procedure where this is done by members of the Seimas themselves is not the only form possible for initiating impeachment proceedings. Giving its consent to hold a person criminally liable, the Seimas also decides that the actual circumstances of the case will be investigated by the judicial institutions – the interrogation and a court – but not by any special investigation commission formed by the Seimas. This means that, if a court recognises that the said person is guilty of committing a crime, it will not be necessary later to submit a separate motion to institute impeachment because of the commission of a crime. A formal statement of charges as an independent action, when this is done by members of the Seimas themselves, is not, in this case, a necessary element of impeachment proceedings.

It needs to be emphasised that, after the Seimas receives an effective convicting court judgment, such a court judgment and decisions of other courts adopted in the course of the consideration of a criminal case are not deliberated at the time of the impeachment proceedings conducted in the Seimas, nor are their lawfulness or reasonableness discussed. In such a case, the Seimas decides only the issue of removing a certain state official from office (revoking the mandate of a member of the Seimas).

The responsibility of state officials to society; impeachment (Article 74 of the Constitution)

The Constitutional Court's ruling of 25 May 2004

Where state officials perform their functions while observing the Constitution and law and acting in the interests of the Nation and the State of Lithuania, they must be protected against any pressure and unjustified interference with their activities, and, where they conscientiously perform their duties, they must not be subject to any threats directed against their person, rights, or freedoms. State officials must have the confidence of the citizens – the national community. However, in order that the citizens – the national community – could reasonably trust state officials so that it would be possible to ascertain that all state institutions and all state officials follow the Constitution and law and obey them, and that those who do not obey the Constitution and law would not hold the office for which the confidence of the citizens – the national community – is needed, it is necessary to ensure public democratic control over the activity of the state officials and their accountability to society comprising, *inter alia*, the possibility of removing from office those state officials who violate the Constitution and law, who bring their personal interests or the interests of a certain group above the public interests, or who bring discredit on state authority by their actions. One of the forms of such public democratic control is the constitutional institution of impeachment: certain top officials of state power – the President of the Republic, the President and justices of the Constitutional Court, the President and justices of the Supreme Court, the President and judges of the Court of Appeal – for a gross violation of the Constitution, a breach of the oath, or when they are found to have committed a crime, may be removed from office or the mandate of a member of the Seimas may be revoked according to the procedure for impeachment proceedings. The application of the institution of impeachment – a special parliamentary procedure and the constitutional sanction of removal from office, which is consolidated in the Constitution, in respect of the President of the Republic, the President and justices of the Constitutional Court, the President and justices of the Supreme Court, and the President and judges of the Court of Appeal – is one of the measures of the self-protection of the national community, the civil Nation, a way of its own defence from the aforesaid high officials of state power if they ignore the Constitution and law where they are prohibited from holding certain office, as they do not fulfil their obligation unconditionally to follow the Constitution and law and to follow the interests of the Nation and the State of Lithuania, and who bring discredit on state authority by their actions.

[...]

... impeachment is a special parliamentary procedure, when the high state officials indicated in Article 74 of the Constitution are removed from office: under Article 74 of the Constitution, the President of the Republic, the President and justices of the Constitutional Court, the President and justices of the Supreme Court, the President and judges of the Court of Appeal may be removed from office or the mandate

of a member of the Seimas may be revoked in accordance with the procedure for impeachment proceedings. It needs to be stressed that impeachment is possible only if there are the grounds indicated in Article 74 of the Constitution: a gross violation of the Constitution, a breach of the oath, or when the specified persons are found to have committed a crime.

In its ruling of 15 April 2004, the Constitutional Court held that, under the Constitution, two institutions of state power have the powers in impeachment proceedings, i.e. the Seimas and the Constitutional Court. Each of these state institutions are assigned, under the Constitution, the powers that are in line with their functions in impeachment proceedings: an impeachment case may be instituted only on a motion (initiative) of members of the Seimas; a conclusion on whether the concrete actions of a person against whom an impeachment case has been instituted are in conflict with the Constitution is presented by the Constitutional Court; if the Constitutional Court draws the conclusion that a person against whom an impeachment case has been instituted has grossly violated the Constitution, the Seimas may remove such a person from office or may revoke his/her mandate of a member of the Seimas by not less than 3/5 majority vote of all the members of the Seimas.

Under the Constitution, only the Constitutional Court has the powers to decide whether the persons specified in Article 74 of the Constitution, against whom an impeachment procedure has been initiated, have grossly violated the Constitution (in view of the fact that a gross violation of the Constitution constitutes also a breach of the oath, it has the powers to decide whether such persons breached the oath). The conclusion of the Constitutional Court that a person has grossly violated the Constitution (and, thus, has also breached the oath) is final. No other state institution, no other state official, and no other subject may change or revoke such a conclusion of the Constitutional Court. Under the Constitution, such a conclusion may not be changed or revoked by referendum, by election, or in any other way.

Article 2 of the Constitution provides that sovereignty belongs to the Nation. Article 4 of the Constitution stipulates that the Nation executes its supreme sovereign power either directly or through its democratically elected representatives. According to Paragraph 1 of Article 55 of the Constitution, members of the Seimas are representatives of the Nation. Thus, under the Constitution, only the Seimas is the representation of the Nation, through which the Nation executes its supreme sovereign power. It should be stressed that, according to the Constitution, there must not be and there is no confrontation between the supreme sovereign power executed by the Nation directly and the supreme sovereign power executed by the Nation through its democratically elected representatives – members of the Seimas. Thus, under the Constitution, there must not be and there is no confrontation between the Nation and its representation – the Seimas: the Seimas implements those powers that have been assigned to it by the Nation in the Constitution adopted by the Nation.

According to the Constitution, if there are the grounds provided for in Article 74 of the Constitution, only the Seimas has the powers to decide whether to remove a person from office or to revoke his/her mandate of a member of the Seimas according to the procedure for impeachment proceedings – these issues may not be decided by referendum or election, and these issues may not be decided by any other state institution, state official, or other subject.

The Seimas, as the representation of the Nation, through which the Nation executes its supreme sovereign power, acts according to the powers pursuant to the Constitution vested in the Seimas by the Nation. Consequently, a decision of the Seimas as the representation of the Nation to remove from office a state official indicated in Article 74 of the Constitution, or to revoke the mandate of a member of the Seimas according to the procedure for impeachment proceedings is, at the same time, the execution of the sovereign powers of the Nation through its democratically elected representatives. Since, under the Constitution, only the Seimas may decide whether to remove from office a certain state official specified in Article 74 of the Constitution, or to revoke the mandate of a member of the Seimas according to the procedure for impeachment proceedings, such a decision of the Seimas may not be changed or revoked by referendum, by election, or in any other way. Consequently, if the Seimas, while following the Constitution, removes from office a state official specified in Article 74 of the Constitution or revokes his/her mandate of a member of the Seimas through impeachment proceedings, such a decision of the Seimas is final.

The President of the Republic is among those state officials indicated in Article 74 of the Constitution who may be removed from office by the Seimas according to the procedure for impeachment proceedings. The impeachment of the President of the Republic in the Seimas is not a legal dispute between the President of the Republic, one of the institutions executing state power, and the Seimas, another institution executing state power. The impeachment of the President of the Republic is a manner of the constitutional responsibility of a person who holds the office of the President of the Republic to the Nation: the Nation through its representation, the Seimas, decides whether a person holding the office of the President of the Republic who has grossly violated the Constitution, breached the oath, or committed a crime should be removed from office.

A gross violation of the Constitution or a breach of the oath undermines the trust in the institution of the President of the Republic and, at the same time, weakens the trust in state authority as a whole and in the State of Lithuania. Impeachment, when a person who has grossly violated the Constitution or breached the oath is removed from the office of the President of the Republic, is one of the ways of the protection of the state as the common good of all society, as provided for in the Constitution.

It needs to be stressed that, under the Constitution, a person in respect of whom the Seimas, following the conclusion of the Constitutional Court that the President of the Republic has committed a gross violation of the Constitution and breached the oath, has applied the constitutional sanction – removal from office, may not escape constitutional responsibility through a new election of the President of the Republic, by a referendum, or by any other means. It should also be stressed that, under the Constitution, neither a referendum nor a new election of the President of the Republic may be and is a way of expressing the trust or mistrust of the citizens in the Seimas after it removes from office the President of the Republic through impeachment proceedings.

Under the Constitution, only the Seimas has the powers to decide whether to remove from office the President of the Republic through impeachment proceedings for a gross violation of the Constitution, a breach of the oath, or the commission of a crime. When evaluating the relationship between the constitutional powers of the Constitutional Court and the Seimas during the impeachment procedure, it needs to be noted that the conclusion of the Constitutional Court that the actions of the President of the Republic are (are not) in conflict with the Constitution is binding on the Seimas insofar as the Constitution does not empower the Seimas to decide whether the conclusion of the Constitutional Court is well founded and lawful – it is only the Constitutional Court that may establish the legal fact that the actions of the President of the Republic are (or are not) in conflict with the Constitution (conclusion of 31 March 2004). Although members of the Seimas, when deciding the issue of the removal of the President of the Republic from office for a gross violation of the Constitution, or a breach of the oath, vote freely, still, this does not mean that members of the Seimas, when deciding whether to remove the President of the Republic from office for a gross violation of the Constitution, or a breach of the oath through impeachment proceedings, are not bound by the oath of a member of the Seimas taken by them, which obligates a member of the Seimas in his/her activity to follow the Constitution, the interests of the state, and his/her conscience, and not to be bound by any mandates. The free mandate of a member of the Seimas, which is consolidated in the Constitution, may not be understood as permission for a member of the Seimas always to act at discretion, to follow his/her conscience, and to ignore the Constitution. The Constitution implies such a notion of the discretion of a member of the Seimas and the conscience of a member of the Seimas whereby no gap must exist between the discretion of a member of the Seimas and the conscience of a member of the Seimas, on the one hand, and the requirements of the Constitution, as well as the values protected and defended by the Constitution, on the other hand: according to the Constitution, the discretion of a member of the Seimas and his/her conscience must be oriented towards the Constitution and the interests of the Nation and the State of Lithuania. Therefore, an especially great responsibility is borne by the Seimas when deciding whether to remove from office the President of the Republic through impeachment proceedings for a gross violation of the Constitution and a breach of the oath: in a democratic state under the rule of law, a person who grossly violates the Constitution or breaches the oath must not escape constitutional responsibility – removal from office.

The prohibition preventing persons removed from office through impeachment proceedings from entering office that requires taking an oath

The Constitutional Court's ruling of 25 May 2004

The Constitution does not provide that, upon the lapse of a certain period of time, the President of the Republic whose actions were declared by the Constitutional Court to have grossly violated the Constitution and he/she himself was declared to have breached the oath, and was removed from office by the Seimas for a breach of the oath and a gross violation of the Constitution, could be treated as one who has not breached the oath or as one who has not grossly violated the Constitution. Under the Constitution, the President of the Republic whose actions were declared by the Constitutional Court as those that grossly violated the Constitution and who has been removed from office through impeachment proceedings by the Seimas, the representation of the Nation, will always remain a person who breached his/her oath to the Nation and grossly violated the Constitution and who was dismissed as the President of the Republic for this reason.

... the Constitution consolidates such an organisation of institutions executing state power and such a procedure for their formation where all institutions executing state power, as well as other institutions, must be formed only from such citizens who without reservations obey the Constitution adopted by the Nation and who, while in office, unconditionally follow the Constitution, law, and the interests of the Nation and the State of Lithuania. ... the elected President of the Republic, according to the Constitution, may begin to hold office only after he/she takes an oath to the Nation to be faithful to the Republic of Lithuania and the Constitution, to conscientiously perform the duties of his/her office, and to be equally just to all.

Under the Constitution, a person who was elected as the President of the Republic, who took the oath of the President of the Republic to the Nation, and subsequently breached this oath and, thus, grossly violated the Constitution, and who, on that account, was removed from office through impeachment proceedings by the Seimas, the representation of the Nation, may not take an oath to the Nation once again, as there would always exist a reasonable doubt, which would never disappear, regarding the certainty and reliability of the repeatedly taken oath; thus, the doubts would always remain as to whether this person would really perform his/her duties of the President of the Republic in the manner that he/she is obliged by the oath to the Nation and whether this person would again breach the oath to the Nation, that is, whether the oath repeatedly taken by this person to the Nation would be fictitious.

... impeachment is one of the forms of public and democratic control over state officials, one of the measures of the self-protection of the national community – the civil Nation, a way of its self-defence against the aforementioned high officials of state power who disregard the Constitution and law, where the said officials are no longer permitted to hold certain office, as they do not fulfil their obligation to unconditionally follow the Constitution, law, as well as the interests of the Nation and the State of Lithuania. It has ... been mentioned that the President of the Republic whose actions are declared by the Constitutional Court as ones that grossly violated the Constitution and who was dismissed as the President of the Republic by the Seimas, the representation of the Nation, following impeachment proceedings, will always remain a person who breached the oath taken to the Nation, who grossly violated the Constitution, and who was dismissed as the President of the Republic for this reason.

Removing from office through impeachment proceedings the President of the Republic or any other person indicated in Article 74 of the Constitution who breaches the oath and grossly violates the Constitution is not an objective in itself. The purpose of the constitutional institution of impeachment is not exclusively a one-off removal of such persons from office; it has a much broader purpose – to prevent persons who grossly violate the Constitution and breach the oath from holding such a constitutionally provided office that is linked with taking an oath specified in the Constitution. The content of the constitutional sanction (constitutional responsibility) applied upon the procedure for impeachment proceedings is composed both of the removal of a person who grossly violates the Constitution and breaches the oath from office, and also of the prohibition stemming therefrom preventing such a person from holding any office provided for in the Constitution that can be entered only after taking the oath

provided for in the Constitution. The said prohibition on holding such office established in the Constitution where entering the said office requires taking an oath provided for in the Constitution is a constituent part of the constitutional sanction – removal from office, but not a repeated punishment of a person who grossly violated the Constitution and breached the oath, and not a second “punishment” imposed on the person for the same violation of the Constitution; such a prohibition also reflects the very essence, mission, and purpose of both constitutional responsibility and impeachment as a measure of the self-protection of the national community – the civil Nation; the said essence, mission, and purpose of impeachment and constitutional responsibility are to ensure that a person who grossly violated the Constitution and breached the oath, and was removed from office by the Seimas for the said reason, could never hold office that requires taking an oath specified in the Constitution.

The Constitution consolidates such a legal regulation whereby a person who was removed from the office of the President of the Republic by the Seimas following impeachment proceedings for a breach of the oath and a gross violation of the Constitution may never stand for election as the President of the Republic. A different interpretation of the provisions of the Constitution would make legally meaningless and pointless the constitutional institution of impeachment for a gross violation of the Constitution and a breach of the oath; in addition, a different interpretation of the provisions of the Constitution would be incompatible with the essence and purpose of constitutional responsibility for a breach of the oath and a gross violation of the Constitution, with the essence and purpose of the oath established in the Constitution as a constitutional value, as well as with the requirement, which arises from the overall constitutional legal regulation, that all institutions executing state power and other state institutions be formed only from such citizens who without reservations obey the Constitution adopted by the Nation and who, while in office, unconditionally follow the Constitution, law, as well as the interests of the Nation and the State of Lithuania. A different interpretation of the provisions of the Constitution would be inconsistent with both the constitutional principle of a state under the rule of law and the constitutional imperative of an open, just, and harmonious civil society.

[...]

... The Constitution consolidates such a legal regulation where, under the Constitution, a person whose mandate of a member of the Seimas was revoked through impeachment proceedings for a gross violation of the Constitution and a breach of the oath, or where a person was removed from the office of the President of the Republic, the President and a justice of the Constitutional Court, the President and a justice of the Supreme Court, the President and a judge of the Court of Appeal for a gross violation of the Constitution and a breach of the oath may never stand for election as the President of the Republic, a member of the Seimas, may never hold the office of a justice of the Constitutional Court, a justice of the Supreme Court, a judge of the Court of Appeal, a judge at another court, a member of the Government, or the Auditor General, i.e. may not hold such office established in the Constitution where, according to the Constitution, entering the said office requires taking an oath provided for in the Constitution. A different interpretation of the provisions of the Constitution would make legally meaningless and pointless the constitutional institution of impeachment for a gross violation of the Constitution and a breach of the oath; in addition, a different interpretation of the provisions of the Constitution would be incompatible with the essence and purpose of constitutional responsibility for a breach of the oath and a gross violation of the Constitution, with the essence and purpose of the oath established in the Constitution as a constitutional value, as well as with the requirement, which arises from the overall constitutional legal regulation, that all institutions executing state power and other state institutions be formed only from such citizens who without reservations obey the Constitution adopted by the Nation and who, while in office, unconditionally follow the Constitution, law, as well as the interests of the Nation and the State of Lithuania. A different interpretation of the provisions of the Constitution would be inconsistent with both the constitutional principle of a state under the rule of law and the constitutional imperative of an open, just, and harmonious civil society.

A crime as the grounds for impeachment (Paragraph 2 of Article 56 and Article 74 of the Constitution)

The Constitutional Court's ruling of 25 May 2004

One of the grounds laid down in Article 74 of the Constitution under which a certain official specified in Article 74 of the Constitution may be removed from office or his/her mandate of a member of the Seimas may be revoked is “found to have committed a crime”. When disclosing what constitutional consequences arise in respect to a person due to the fact that he/she was removed from office, or his/her mandate of a Seimas member was revoked following impeachment proceedings for the commission of a crime, account must also be taken of the provision, which is laid down in Paragraph 2 of Article 56 of the Constitution, whereby persons who have not served punishment imposed by a court judgment may not stand for election as a member of the Seimas. This constitutional provision also means that, if a person sentenced by a court for having committed a crime has served punishment imposed by a court judgment, he/she may stand for election as a member of the Seimas.

In this context, it should be mentioned that crimes provided for in the criminal law may be not only grave, but also minor ones, they may be committed not only intentionally, but also due to negligence, they may be more dangerous or less dangerous, they may cause especially severe consequences or consequences not that severe, they may be committed due to selfish or unselfish intentions, they may be related or not related to the duties performed (office held), etc. As such, the commission of a crime does not mean that a person has, at the same time, violated the Constitution, or breached the oath, or that, in his/her activity, the said person has not observed the Constitution, or failed to act in the interests of the Nation and the State of Lithuania, etc. Some crimes may also be of such a nature that they do not interrelate directly with a breach of the oath provided for in the Constitution or a gross violation of the Constitution. Therefore, the Constitution itself (Paragraph 2 of Article 56) establishes *expressis verbis* an exception in respect to the consequences that arise due to the fact that a person was removed from office or his/her mandate of a member of the Seimas was revoked following impeachment proceedings for the commission of a crime. It follows from the provisions of Article 74 and Paragraph 2 of Article 56 of the Constitution that a crime by which the Constitution is not grossly violated and the oath is not breached does not cause the same constitutional legal effects as a crime by which the Constitution is grossly violated or the oath is breached. Paragraph 2 of Article 56 of the Constitution, according to which a person who has served punishment imposed by a court judgment may stand for election as a member of the Seimas, by providing for an exception in respect to the consequences that arise upon the application of the sanctions set forth in Article 74 of the Constitution for a gross violation of the Constitution and a breach of the oath, means that the Constitution does not provide that a person who was removed from the office of the President of the Republic following impeachment proceedings for the commission of such a crime by which the Constitution was not grossly violated or the oath was not breached may not stand for election as a member of the Seimas; on the contrary, by making the said exception, the Constitution *expressis verbis* permits such a person to stand for election as a member of the Seimas.

... in a democratic state under the rule of law, a person who grossly violates the Constitution or breaches the oath must not escape constitutional responsibility – removal from office. Therefore, under the Constitution, the Seimas, which decides whether to remove, in accordance with impeachment proceedings, a person from office or to revoke his/her mandate of a member of the Seimas for the commission of a crime, bears the responsibility to ascertain whether the Constitution was grossly violated and the oath was breached as a result of committing such a crime.

In view of the fact that one of the conditions established in Paragraph 1 of Article 78 of the Constitution when a person may stand for election as the President of the Republic is that the fact that he/she “may stand for election as the President of the Republic”, it should be held that the Constitution provides that a person who was removed by the Seimas from office or whose mandate of a member of the Seimas was revoked following impeachment proceedings for the commission of a crime by which the

Constitution was not grossly violated or the oath was not breached may stand for election as the President of the Republic (i.e. the Constitution gives permission for standing for such election).

The oath taken by state officials

The Constitutional Court's ruling of 25 May 2004

Under the Constitution, not only the President of the Republic who is the Head of State, but also the members of the Seimas, the members of the Government, the justices of the Constitutional Court, judges of other courts, and the Auditor General, must take an oath.

Paragraph 2 of Article 59 of the Constitution prescribes that an elected member of the Seimas acquires all rights of a representative of the Nation only after taking at the Seimas an oath to be faithful to the Republic of Lithuania; the text of the oath of a member of the Seimas is established in Article 5 of the Republic of Lithuania's Law on the Procedure for the Entry into Force of the Constitution of the Republic of Lithuania, which is a constituent part of the Constitution. Paragraph 3 of Article 59 of the Constitution stipulates that a member of the Seimas who either does not take the oath according to the procedure established by means of a law or takes a conditional oath loses the mandate of a member of the Seimas, and the Seimas adopts the respective resolution thereon. Article 93 of the Constitution provides that, before taking office, the Prime Minister and ministers take an oath at the Seimas to be faithful to the Republic of Lithuania and to observe the Constitution and laws; the same article stipulates that the text of the oath is established by the Law on the Government. Paragraph 2 of Article 104 of the Constitution states that, before entering office, the justices of the Constitutional Court take an oath at the Seimas to be faithful to the Republic of Lithuania and the Constitution. Paragraph 6 of Article 112 of the Constitution provides that a person appointed as a judge must, according to the procedure established by means of a law, take an oath to be faithful to the Republic of Lithuania and to administer justice only according to the law. Paragraph 3 of Article 133 of the Constitution provides that, before taking office, the Auditor General takes an oath and that the oath is established by means of a law.

Thus, according to the Constitution, the members of the Seimas, the members of the Government, the justices of the Constitutional Court, judges of other courts, and the Auditor General must take an oath before entering office. The aforementioned persons may not begin to hold office before they take an oath.

In view of the fact that, under the Constitution, the legal status of the said state officials differs, the texts of their oaths established in the Constitution are also not the same; however, the texts of the oaths of all indicated state officials reflect the same constitutional values from various aspects; on the other hand, the texts of the oaths stress namely the values that are linked by the Nation with the respective office and with the activity of persons holding the respective office.

It needs to be noted that, under the Constitution, the members of the Seimas, the members of the Government, and judges must swear to be faithful to the Republic of Lithuania (although, as mentioned before, due to the different legal status of the state officials indicated in the Constitution, the texts of the oaths are not the same). It also needs to be noted that the text of the oath of the Auditor General is not established in the Constitution (under Paragraph 3 of Article 133 of the Constitution, the oath of the Auditor General is established by law); however, the constitutional status of the Auditor General implies the requirement for the Auditor General to take an oath to be faithful to the Republic of Lithuania ...

Faithfulness to the State of Lithuania is inseparable from faithfulness to the Constitution; upon a breach of the oath to be faithful to the Republic of Lithuania, the Constitution is also grossly violated.

It needs to be mentioned that the oath of the members of the Seimas, the members of the Government, the justices of the Constitutional Court, judges of other courts, the Auditor General, as well as the oath of the President of the Republic, is not a mere formal or symbolic act. In view of the fact that the institution of the oath of the aforementioned state officials and the content of their oath are established in the Constitution, the oath taken by the said persons bears the constitutional meaning and gives rise to constitutional legal effects: a person may not begin to hold office before he/she takes an oath; under the Constitution, the refusal to take the oath, taking the oath with certain reservations, or changing the text of the oath, or the refusal to sign the text of the oath mean that a particular person may not take office: if a

person elected as a member of the Seimas does not take the oath, the Seimas must adopt a resolution on the loss of the mandate of a member of the Seimas (Paragraph 3 of Article 59 of the Constitution); if a person appointed a justice of the Constitutional Court, a justice of the Supreme Court, a judge of the Court of Appeal, or a judge of another court does not take the oath, another person must be appointed to the said office; if a person appointed a member of the Government does not take the oath, another person must be appointed to the said office; if a person appointed the Auditor General does not take the oath, another person must be appointed the Auditor General.

The act of the oath of the aforesaid state officials is constitutionally legally significant also for the reason that, when taking the oath, the aforementioned persons publicly and solemnly accept the obligation to act in accordance with the obligations of the oath; their constitutional obligation to act only in accordance with the obligations of the oath and to breach the oath under no circumstances emerges from the moment of taking the oath. Under Article 74 of the Constitution, a breach of the oath is one of the grounds under which not only the President of the Republic, but also the President and justices of the Constitutional Court, the President and justices of the Supreme Court, as well as the President and judges of the Court of Appeal, may be removed from office, or the mandate of a member of the Seimas may be revoked following impeachment proceedings.

The responsibility of state officials to society; the principle of responsible governance

The Constitutional Court's ruling of 1 July 2004

The Constitution is supreme law, which imposes limitations on state power. The Constitution consolidates the principle of responsible governance.

The fact that, under the Constitution, the Nation executes its supreme sovereign power either directly or through its democratically elected representatives, that the scope of powers is limited by the Constitution, and that state institutions serve the people, implies that state officials, who perform their functions when implementing state power, and all persons who make decisions important to society and the state, must follow the Constitution and law and must act in the interests of the Nation and the State of Lithuania. The civil Nation, which entrusts such persons with the management of general matters and with representation of the Nation and the state who make decisions important to society and the state by virtue of the office they hold or the mandate they have acquired, must be protected from the arbitrariness of state officials, from their actions based on their personal or group interests instead of the interests of the Nation and the State of Lithuania, from using their status for the benefit of their own, their close relatives, or other persons. In its ruling of 25 May 2004, the Constitutional Court held the following: "In order that the citizens – the national community – could reasonably trust state officials so that it would be possible to ascertain that all state institutions and all state officials follow the Constitution and law and obey them, and that those who do not obey the Constitution and law would not hold the office for which the confidence of the citizens – the national community – is needed, it is necessary to ensure public democratic control over the activity of state officials and their accountability to society comprising, *inter alia*, the possibility of removing from office those state officials who violate the Constitution and law, who bring their personal interests or the interests of a certain group above the public interests, or who bring discredit on state authority by their actions."

According to the Constitution, the legislature has the duty to establish by means of legal acts such a legal regulation that would ensure that state officials, who perform their functions in implementing state power, and all persons who make decisions important to society and the state, are able to properly exercise their powers, that clashes between public and private interests are avoided, that no legal conditions are created for state officials, who perform their functions in implementing state power, and for all persons who make decisions important to society and the state, for acting in the private interests or interests of a certain group instead of the interests of the Nation and the State of Lithuania, and for using their status for the benefit of their own, their close relatives, or other persons in order to make it possible to effectively control how state officials, who perform their functions in implementing state power, and all persons who

make decisions important to society and the state follow the said requirements, and in order to hold liable under to the Constitution and law the aforementioned state officials or other persons if they do not follow these requirements.

The requirements of fair legal proceedings applicable in impeachment proceedings

The Constitutional Court's conclusion of 3 June 2014

In its ruling of 11 May 1999, the Constitutional Court held that the constitutional concept of impeachment implies fair legal proceedings, in which the priority is given to the protection of the rights of a person; the protection of the rights of a person is guaranteed only if the proceedings are public, the parties to the proceedings have equal rights, and the legal disputes, in particular those regarding the rights of a person, are decided by ensuring that the said person has the right and possibility of defending those rights.

It should be noted that the requirement for fair legal proceedings gives rise to the duty of the legislature to establish a legal regulation that would create the preconditions for a member of the Seimas or a state official against whom impeachment is or has been instituted to defend his/her rights at all stages of impeachment proceedings. It should also be noted that the requirement for fair legal proceedings implies the duty of the state institutions that have the constitutional powers in impeachment proceedings, i.e. the Seimas and the Constitutional Court, when they implement their respective functions in impeachment proceedings, to enable a person against whom impeachment is or has been instituted to implement his/her rights in impeachment proceedings.

The obligation of persons against whom impeachment is applied to participate in the impeachment proceedings

The Constitutional Court's conclusion of 3 June 2014

... a member of the Seimas or a state official against whom impeachment is to be or has been instituted has the right, as well as the obligation stemming from their oath, to participate in the impeachment proceedings. A member of the Seimas or a state official, who has taken the oath to be faithful to the Republic of Lithuania and to respect and execute its Constitution and laws, must respect state power institutions. Thus, a member of the Seimas or a state official against whom impeachment is to be or has been instituted has the obligation to arrive, when requested, at the state institutions that have the constitutional powers in impeachment proceedings and to provide explanations for the actions that are a subject matter of the investigation and assessment carried out by these institutions. Failure to fulfil this obligation when a person is duly informed about the ongoing impeachment proceedings does not prevent the state institutions that have the constitutional powers in impeachment proceedings, *inter alia*, the Constitutional Court, to exercise their powers and adopt decisions that fall within their competence.

The powers of the Seimas and the Constitutional Court in impeachment proceedings initiated after a certain person is found to have committed a crime

The Constitutional Court's decision of 10 May 2016

... under the Constitution, the Seimas decides whether to remove, in accordance with impeachment proceedings, a person from office or to revoke his/her mandate of a member of the Seimas for the commission of a crime. By filing with the Constitutional Court an inquiry on the constitutionality of the concrete actions of a person against whom an impeachment case has been instituted, the Seimas implements its responsibility to ascertain whether the Constitution was grossly violated and the oath was breached as a result of committing such a crime.

... it should also be noted that the application of the impeachment ground "found to have committed a crime" does not imply that the Seimas has the powers to apply to the Constitutional Court with an inquiry whether the concrete actions of a member of the Seimas against whom an impeachment case has been instituted are in conflict with the Constitution in cases where such actions could not violate the Constitution in a gross manner or breach the oath of the member of the Seimas since these actions had been performed

before the said oath was taken. Where the impeachment ground “found to have committed a crime” is applied, the Constitutional Court does not have the powers to assess the constitutionality of any such actions by which the Constitution could not be violated and the oath could not be breached by a member of the Seimas because the said actions had been performed before the member of the Seimas took his/her oath; otherwise, the constitutional concept of impeachment would be disregarded.

Impeachment on the grounds of being found to have committed a crime (Article 74 of the Constitution)

The Constitutional Court’s ruling of 24 February 2017

... the constitutional purpose of impeachment as one of the instruments of the self-protection of civil society is public democratic control over the activity of the highest state officials, which creates the preconditions for imposing constitutional responsibility on them: removing from office those officials or revoking the mandate of those members of the Seimas who bring discredit on state authority by their actions and, due to this, lose the confidence of the citizens.

[...]

... under Article 74 of the Constitution, impeachment can be applied for various crimes found to have been committed. However, this in itself does not mean that, when found to have committed a crime, persons should be removed from office (or have their mandates of a member of the Seimas revoked) in all cases for having committed any type of a crime: a decision on the application of impeachment on the indicated grounds and the ensuing removal of the person from office (revocation of his/her mandate of a member of the Seimas) on the indicated grounds may be taken exclusively by the institution vested with the respective powers in the impeachment process, i.e. by the Seimas (*inter alia*, in the cases provided for in the Constitution and upon receiving the relevant conclusion of the Constitutional Court) through impeachment proceedings by a 3/5 majority vote of all the members of the Seimas.

... the impeachment grounds of being “found to have committed a crime”, as specified in Article 74 of the Constitution, are not linked to the time when a crime was committed; specifically, it is only the fact of having committed a crime that must be found while a person indicated in Article 74 of the Constitution is in office.

The special status, *inter alia*, the powers, of officials (highest state officials) whose constitutional responsibility is decided in impeachment proceedings implies that the preconditions for discrediting state authority can be created not only in cases where the persons specified in Article 74 of the Constitution are, in the course of holding their respective office, found to have committed a crime while in office, but also where state authority is exercised while implementing certain functions by the persons specified in Article 74 of the Constitution who had committed a crime before taking up office and these circumstances transpire while they are already in office. A different interpretation of the provisions of Article 74 of the Constitution would be incompatible with the constitutional purpose of impeachment, since it would create the preconditions for holding office by those highest state officials who, once it is found that they had committed a crime before taking up office, would bring discredit on state authority and, due to this, would lose the confidence of the citizens.

Thus, as mentioned before, the constitutional purpose of impeachment, is public democratic control over the activity of the highest state officials, which creates the preconditions for imposing constitutional responsibility on them: removing from office those officials or revoking the mandate of those members of the Seimas who bring discredit on state authority by their actions and, due to this, lose the confidence of the citizens; in view of this, under Article 74 of the Constitution, impeachment may be applied for both a crime committed by a person before taking up a position specified in this article and a crime committed while holding such a position.

It should be noted that the circumstance that the actions creating the preconditions for applying impeachment on the above-mentioned grounds had been committed by a person specified in Article 74 of the Constitution before taking up office implies the specific features of the impeachment process itself.

[...]

... under the Constitution, it is exclusively the Seimas that, while implementing its constitutional powers to conduct impeachment, is allowed to adopt a decision to institute impeachment proceedings against a particular person. Therefore, impeachment proceedings against a particular person for having committed a crime are instituted only upon the decision of the Seimas after the members of the Seimas formally bring charges against this person or after the effective judgment of conviction is received from a court. At the same time, giving its consent to hold a person criminally responsible, the Seimas decides only to the extent that the circumstances important for applying impeachment for a crime having been committed will be established by judicial institutions; taking such a decision does not in itself constitute the institution of impeachment proceedings.

... the special constitutional status of the President of the Republic, *inter alia*, the special immunity granted to him/her, which is evident in the fact that, among other things, the President of the Republic may not be held criminally responsible while in office, determines that the circumstances important for the application of impeachment with regard to the President of the Republic for having committed a crime may be established exclusively by the Seimas.

[...]

Thus, the Seimas itself may establish the circumstances important for impeachment imposed for a crime having been committed only in cases where the fact of a crime having been committed (and the official having committed it) is obvious, as well as in cases where impeachment is conducted against the President of the Republic. In all other cases, after the Seimas gives its consent to hold a particular person indicated in Article 74 of the Constitution criminally responsible, impeachment for having committed a crime may be conducted only after the authorised judicial authorities establish the circumstances important for the application of impeachment on the constitutional grounds of being “found to have committed a crime”, i.e. after the fact of a crime having been committed and the official having committed it are established by the effective court judgment of conviction.

It should be noted in this context that the fact of a crime having been committed (and the official having committed it) can be considered obvious only where there is reliable information (submitted by the authorised institution to the Seimas) that a particular person indicated in Article 74 of the Constitution has been found in the act of committing a crime, and, in order to be able to state the circumstances important for applying impeachment on the constitutional grounds of being “found to have committed a crime”, i.e. to state the fact of a crime having been committed and the official having committed it, the participation of judicial authorities carrying out pretrial investigation and considering criminal cases is not required. In other cases, *inter alia*, where a crime is committed by a person indicated in Article 74 of the Constitution before taking up office, the fact of having committed a crime cannot be considered obvious; therefore, in these cases (except where impeachment is applied with regard to the President of the Republic), the circumstances important for the application of impeachment, i.e. the fact of a crime having been committed (and the official having committed it), must be established by the authorised judicial authorities after the Seimas gives its consent to hold a particular person indicated in Article 74 of the Constitution criminally responsible.

It should be noted that, even in the above-mentioned exceptional case where the fact of a crime having been committed is obvious and can be stated by the Seimas itself, the Seimas may also decide, according to the procedure provided for in the Statute of the Seimas, whether to give its consent to hold a particular person indicated in Article 74 of the Constitution (except the President of the Republic) criminally responsible. After the Seimas gives its consent to hold a particular person indicated in Article 74 of the Constitution criminally responsible, the impeachment proceedings may be continued in the Seimas against the person for having committed a crime, the fact of having committed which is obvious, while the judicial authorities may at the same time decide the question concerning the criminal responsibility of that person. A different interpretation of the provisions of the Constitution (that, purportedly, after deciding to conduct impeachment for a crime the fact of having committed which is obvious, the Seimas would not be allowed to give its consent to hold the person having committed this crime criminally responsible) would make it complicated to hold the said person criminally responsible or would even create the preconditions for the

person against whom impeachment is applied for a crime the fact of having committed which is obvious to escape criminal responsibility.

[...]

... impeachment on the constitutional grounds of being “found to have committed a crime” in those cases where the Seimas gives its consent to hold a particular person criminally responsible (except where the fact of a crime having been committed (as well as the official having committed it) is obvious) is permissible after the circumstances important for the application of impeachment have been established by the effective court judgment of conviction indisputably, i.e. conclusively (in view of the competence of courts belonging to the ... instance system of courts).

The requirements of fair legal process applicable to impeachment proceedings (*inter alia*, the requirement of the publicity of impeachment proceedings and the requirement of creating the conditions for a person to defend his/her rights at all stages of impeachment proceedings) are not absolute

The Constitutional Court’s conclusion of 19 December 2017

... under the Constitution, the requirements of fair legal process that apply to impeachment are not absolute. The Constitutional Court has noted that the values consolidated in the Constitution constitute a harmonious system and there is a balance among these values; in the event of a clash between the values protected by the Constitution, it is necessary to find decisions ensuring that none of these values will be denied or unreasonably limited; otherwise, the balance among the values protected by the Constitution, the constitutional imperative of a harmonious and civil society, as well as the constitutional principle of a state under the rule of law, would be denied (*inter alia*, the rulings of 23 October 2002 and 4 March 2003).

Against this background, it should be noted that the requirement of the publicity of impeachment proceedings, which is meant to ensure the rights of a person being impeached, must also be interpreted in the context of other constitutional values.

Paragraph 1 of Article 117 of the Constitution prescribes: “In all courts, the consideration of cases shall be public. A closed court hearing may be held in order to protect the secrecy of private or family life, or where the public consideration of the case might disclose a state, professional, or commercial secret.”

The Constitutional Court has held that the provision “in all courts” of Paragraph 1 of Article 117 of the Constitution embraces the courts of all systems, the courts of all levels, and the courts of all instances (ruling of 6 December 2012). The Constitutional Court is part of the judiciary system (rulings of 6 June 2006 and 13 May 2010). Thus, Paragraph 1 of Article 117 of the Constitution also applies to court proceedings before the Constitutional Court, *inter alia*, in the course of considering a case on determining whether the actions of a person being impeached are in conflict with the Constitution.

In its ruling of 6 December 2012, the Constitutional Court, when interpreting Paragraph 1 of Article 117 of the Constitution, noted that the principle of the public consideration of cases in a court is not absolute; Paragraph 1 of Article 117 of the Constitution, in which the said principle is consolidated, provides both for certain exceptions to the publicity of the consideration of cases and for situations where a closed court hearing may be held; the publicity is limited for the purposes of protecting the private or public interest; the principle of the public consideration of cases in a court may also be limited by means of a law, with a view to protecting other constitutional values; in order to protect human dignity, the inviolability of private life (Article 22 of the Constitution), and other values whose protection stems from the Constitution, it is permitted to limit, by means of a law, the publicity of separate elements of the process of the consideration of cases.

It should be mentioned that, under Paragraph 4 of Article 22 of the Constitution, courts must also protect everyone from arbitrary or unlawful interference with his/her private and family life, as well as from encroachment upon his/her honour and dignity.

Thus, in the light of Paragraph 1 of Article 117 of the Constitution ... it should be noted that, for the protection of the private or public interest, *inter alia*, in order to protect constitutional values such as human dignity and the inviolability of private life, certain elements of proceedings before the Constitutional Court

in the course of considering a case on the constitutionality of the actions of a person being impeached (*inter alia*, a hearing of the Constitutional Court in which evidence is examined, witnesses are questioned, and pleadings take place) may be not open to the public by a decision of the Constitutional Court.

This is also *mutatis mutandis* applicable when impeachment proceedings are instituted and carried out at the Seimas.

... it should also be noted that the requirement to create the conditions for a member of the Seimas or a public official against whom impeachment is being or has been instituted to defend his/her rights at all stages of the impeachment proceedings should also be interpreted in the context of other provisions of the official constitutional doctrine.

... under the Constitution, impeachment proceedings begin only after the Seimas adopts a resolution on instituting impeachment proceedings in the Seimas against a concrete person. Thus, the actions preceding the beginning of impeachment, i.e. before the Seimas adopts such a resolution (where such actions include, *inter alia*, the initiative of the members of the Seimas to institute impeachment and the investigation of the reasonableness of the charges brought by them in a commission set up by the Seimas or in another structural unit of the Seimas), do not constitute a stage of impeachment proceedings; therefore ... a person against whom impeachment may be instituted need not be given the same conditions for defending his/her rights as a person against whom impeachment has been instituted and is under way. It should be noted that the creation of different conditions for defending his/her rights for a person against whom impeachment may be instituted can also be based, *inter alia*, on the above-mentioned purpose of protecting the private or public interest, among other things, on the objective to protect constitutional values such as human dignity and the inviolability of private life.

It is also necessary to take into account the fact that the Seimas by its nature and essence is an institution of a political character, whose decisions reflect the political will of the majority of the members of the Seimas and are based on political agreements and various political compromises (conclusion of 31 March 2004 and the ruling of 27 May 2014). Therefore, the actions preceding the beginning of impeachment, i.e. before the Seimas adopts a resolution on instituting impeachment proceedings in the Seimas against a concrete person (*inter alia*, the initiative of members of the Seimas to institute impeachment and the investigation of the reasonableness of the charges brought by them in a commission set up by the Seimas or in another structural unit of the Seimas), which, as mentioned before, do not constitute a stage of impeachment proceedings, is a parliamentary procedure that must not be regarded as a legal process *stricto sensu*, since, in the course of this parliamentary procedure, the Seimas does not decide on the application of constitutional responsibility of a person, but only whether there is a basis for instituting impeachment. This parliamentary procedure must be regulated in such a way that would ensure the due process of law, which means, *inter alia*, that a person against whom impeachment may be instituted must have a real possibility of knowing what he/she is being accused of, submitting his/her explanations to the Seimas or to a commission set up by the Seimas or to another structural unit of the Seimas that is investigating the reasonableness of the charges brought against the said person, or, at the sitting of the Seimas in which it is decided on whether to begin impeachment, responding to the arguments on which the charges against this person are based.

[...]

... under the Constitution, impeachment proceedings as a whole should be considered fair and appropriate if, in compliance with the requirements of fair legal proceedings, a member of the Seimas the issue of whose constitutional responsibility is being decided and/or his/her representatives is/are provided with the conditions for defending their interests both at the hearing of the Constitutional Court and at the Seimas where, in accordance with the procedure established in the Statute of the Seimas, impeachment proceedings are continued following the entry into force of the conclusion of the Constitutional Court that the concrete actions of the person against whom the impeachment case has been instituted are in conflict with the Constitution.

The grounds for impeachment; constitutional responsibility on the grounds of a breach of the oath may not be applied for acts committed before taking the oath, *inter alia*, acts committed during the previous term of office (Article 74 of the Constitution)

The Constitutional Court's conclusion of 22 December 2017

The persons specified in Article 74 of the Constitution may be removed from office (or their mandate of a member of the Seimas may be revoked) through impeachment proceedings for the actions provided for in the Constitution: a gross violation of the Constitution, a breach of the oath, or for having committed a crime (rulings of 15 April 2004 and 24 February 2007).

It should be noted that these grounds for impeachment are not identical and may not be interpreted in the same manner.

As noted by the Constitutional Court in its ruling of 24 February 2017, the impeachment grounds of being “found to have committed a crime”, as specified in Article 74 of the Constitution, are not linked to the time when a crime is committed; it is only the fact of having committed a crime that must be found while a person indicated in Article 74 of the Constitution is in office; the preconditions for bringing discredit on state power can be created not only in cases where it transpires that the persons specified in Article 74 of the Constitution have committed a crime while holding their respective office, but also where state power is exercised while implementing certain functions by persons specified in Article 74 of the Constitution who committed a crime before taking up their respective office and these circumstances transpire already when they are in this office.

It should be mentioned that, where the impeachment grounds of being “found to have committed a crime” are applied, the Constitutional Court does not have the powers to assess the constitutionality of such respective actions where they cannot be deemed a gross violation of the Constitution and a breach of the oath precisely due to the fact that the said actions had been performed before the oath of a member of the Seimas was taken; otherwise, the constitutional concept of impeachment would be disregarded (ruling of 24 February 2017).

The other grounds indicated in Article 74 of the Constitution for impeachment – a gross violation of the Constitution and a breach of the oath, from the aspect of the time of committing the actions constituting these grounds, should be assessed differently compared to the grounds of being “found to have committed a crime”.

The wording of Article 74 of the Constitution, under which the Seimas may remove the persons specified in this article from office through impeachment proceedings if they “grossly violate the Constitution or breach their oath”, makes it clear that importance falls not only on the time when the actions grossly violating the Constitution or breaching the oath transpire; the time of committing these actions is also important, i.e. it is important that such actions are committed by the person not at any time, but while holding the office referred to in Article 74 of the Constitution, which may be entered only after taking an oath provided for in the Constitution, and while being bound by the oath.

It should be noted that impeachment proceedings are not an objective in itself. ... the objective of impeachment proceedings is to decide the question of the constitutional responsibility of the persons specified in Article 74 of the Constitution. The content of the constitutional sanction (constitutional responsibility) applied through impeachment proceedings for a gross violation of the Constitution and a breach of the oath comprises both the removal from office of the person who has grossly violated the Constitution and breached the oath and the prohibition stemming therefrom that prevents such a person in the future from holding any constitutionally established office that can be entered only after taking an oath provided for in the Constitution (rulings of 25 May 2004 and 5 September 2012 and the conclusion of 19 December 2017).

Thus, removal from office as a constitutional sanction applied through impeachment proceedings must be related to a gross violation of the Constitution and a breach of the binding oath committed while holding this office (rather than other office or office held previously), i.e. the purpose of this sanction is to remove a person indicated in Article 74 of the Constitution specifically from the office being held by that person –

such office that he/she entered after taking the respective oath and was holding at the time when he/she breached his/her binding oath. Obviously, it is impossible to remove a person from office that he/she is no longer holding after his/her powers have expired (ceased); therefore, the constitutional responsibility of a person indicated in Article 74 of the Constitution for a gross violation of the Constitution or a breach of the oath committed at the time when he/she was holding the said office is also impossible. In addition, if the Constitution were interpreted in a way that a person referred to in Article 74 of the Constitution, purportedly, could be removed from office through impeachment proceedings for such a gross violation of the Constitution or a breach of the oath that was committed at the time when he/she was earlier holding the office provided for in Article 74 of the Constitution, constitutional responsibility could be a manifestly disproportionate measure against those persons specified in Article 74 of the Constitution who would themselves confess to having committed a gross violation of the Constitution or a breach of the oath and would resign from the earlier office referred to in Article 74 of the Constitution even before impeachment begins (or before it ends); even such persons, should they take up again the positions referred to in Article 74 of the Constitution, would always be faced with the risk that they will be impeached, and constitutional responsibility will be applied to them for the gross violation of the Constitution and the breach of the oath to which they confessed and which were committed by them while being in the office from which they resigned.

As mentioned before in the context of the interpretation of the provisions of Paragraphs 1 and 2 of Article 59 and the provisions of Article 63 of the Constitution, the taken oath binds a member of the Seimas as a representative of the Nation during all the duration of his/her term of powers, i.e. from the moment when he/she, having taken an oath to the Republic of Lithuania under the Constitution, acquires all the rights of a representative of the Nation until the moment when his/her powers as a member of the Seimas cease on any of the grounds set out in Article 63 of the Constitution, *inter alia*, when the newly elected Seimas convenes for the first sitting after the expiry of the term of powers (incumbency) of the member of the Seimas (Item 1 of Article 63 of the Constitution); according to the Constitution, after the cessation of the powers of a member of the Seimas, the oath of a member of the Seimas taken by him/her is no longer binding.

Thus, under the Constitution, *inter alia*, Article 74 thereof, it is impossible to apply constitutional responsibility to a member of the Seimas through impeachment proceedings for his/her actions that may have grossly violated the Constitution and breached his/her oath if these actions were committed during a previous term of office of the member of the Seimas (during the exercise of powers held previously). Accordingly, under the Constitution, the Constitutional Court has no powers to assess, in terms of compliance with the Constitution, such actions of a member of the Seimas that were performed during his/her previous term of office as a member of the Seimas (during the exercise of powers held previously), i.e. at the time before the member of the Seimas took his/her binding oath of a member of the Seimas.

In this context, it should be noted that, under the Constitution, it would be possible to apply impeachment to a member of the Seimas for his/her actions that were committed during his/her previous term of office as a member of the Seimas and may have grossly violated the Constitution and breached his/her oath binding at that time if such actions were also criminal, i.e. upon the impeachment grounds of being “found to have committed a crime”. In any case, the actions of a member of the Seimas that were committed during his/her previous term of office as a member of the Seimas and may have grossly violated the Constitution and breached his/her oath binding at that time could provide the grounds, according to Article 75 of the Constitution, for expressing no confidence in such a member of the Seimas and removing him/her from the office at the Seimas for which he/she was appointed or elected by the Seimas, or such actions of a member of the Seimas could also be an object for an investigation by an ad hoc investigation commission of the Seimas if they were of particular importance, i.e. of state importance (in view of the fact that, as noted by the Constitutional Court on more than one occasion, ad hoc investigation commissions of the Seimas must be formed for an investigation into not any, but only special questions, i.e. those of state importance).

Parliamentary procedure before instituting impeachment proceedings

The Constitutional Court's conclusion of 22 December 2017

... a member of the Seimas or state official against whom impeachment may be instituted is also obliged to participate in the parliamentary procedure before instituting impeachment (*inter alia*, in the course of investigating, in a commission set up by the Seimas or in another structural unit of the Seimas, the reasonableness of charges brought by members of the Seimas) and, when summoned, to attend the meetings of the commission set up by the Seimas or another structural unit of the Seimas that is carrying out this procedure and to provide explanations regarding the actions under investigation. Under the Constitution, the requirement for the due legal process in this parliamentary procedure implies such a process during which a member of the Seimas or state official against whom impeachment may be instituted could effectively exercise the above-mentioned rights, *inter alia*, be aware of what he/she is being accused of, provide his/her explanations, and respond to the arguments on which the charges against him/her are based. Therefore, this parliamentary procedure must, *inter alia*, be such that the commission set up by the Seimas or another structural unit of the Seimas would investigate the reasonableness of charges brought by members of the Seimas (or the structural unit of the Seimas) initiating impeachment, rather than would formulate charges that are, in principle, new and have not been brought by the entities initiating impeachment, in particular on the grounds of the explanations submitted to the said commission of the Seimas or another structural unit of the Seimas by the member of the Seimas or state official against whom impeachment may be instituted; otherwise, the preconditions would be created for deterring the member of the Seimas or state official against whom impeachment may be instituted from exercising the above-mentioned rights of the due legal process.

The prohibition for a person removed from office through impeachment procedure to stand for election as the President of the Republic

The Constitutional Court's decision of 28 May 2019

... in its decision of 20 March 2014, the Constitutional Court held that the prohibition, stemming from the Constitution, for a person to stand for election as the President of the Republic if the person has grossly violated the Constitution and breached an oath and, due to this, through impeachment procedure has been removed from the office of the President of the Republic, the President and a justice of the Constitutional Court, the President and a justice of the Supreme Court, or the President and a judge of the Court of Appeal, or his/her mandate of a member of the Seimas has been revoked, could be abandoned only after the Constitution is amended accordingly. This is also reiterated in the Constitutional Court's ruling of 22 December 2016 ...

Thus, under the Constitution, the prohibition to stand for election as the President of the Republic for a person who has grossly violated the Constitution and breached an oath and, due to this, through impeachment procedure has been removed from the office held can be abolished in the only way possible – by amending the relevant provisions of the Constitution accordingly.

Parliamentary procedure before instituting impeachment proceedings

The Constitutional Court's ruling of 18 December 2019

In its conclusion of 19 December 2017, interpreting the issues relating to the beginning of impeachment proceedings in the Seimas, the Constitutional Court held that, *inter alia*, the actions preceding the beginning of impeachment, i.e. before the Seimas adopts a resolution on instituting impeachment proceedings in the Seimas against a concrete person (where such actions include, *inter alia*, the initiative of members of the Seimas to institute impeachment and the investigation of the reasonableness of the charges brought by them in a commission set up by the Seimas or in another structural unit of the Seimas), do not constitute a stage of impeachment proceedings; these actions preceding the beginning of impeachment constitute a parliamentary procedure that cannot be regarded as a legal process *stricto sensu*:

in the course of this parliamentary procedure, the Seimas does not decide on the application of constitutional responsibility of a person, but only whether there is a basis for instituting impeachment.

The Constitutional Court has held that, under Article 74 of the Constitution, the establishment of the procedure for impeachment proceedings is within the competence of the Seimas: it must define it in the Statute of the Seimas (rulings of 11 May 1999 and 25 January 2001).

In view of the fact that ... the actions preceding the beginning of impeachment constitute a parliamentary procedure ... the Constitution, *inter alia*, Article 74 thereof, requires that the Statute of the Seimas regulate, *inter alia*, the actions preceding the beginning of impeachment, i.e. before the Seimas adopts a resolution on instituting impeachment proceedings against a concrete person in the Seimas, among other things, that the Statute of the Seimas regulate the procedure for the formation of a commission of the Seimas for investigating the reasonableness of the charges brought against the said person.

Declaring private interests

The Constitutional Court's ruling of 19 December 2019

... it should be noted that, under the Constitution, *inter alia*, the provision of Paragraph 3 of Article 5 thereof that state institutions serve the people, and under the constitutional principle of responsible governance, in order to ensure transparency and publicity in the management of state, municipal, and other public affairs, *inter alia*, in order to prevent corruption and abuse of power in the management of these affairs, the legislature may impose the duty to declare private interests on various persons, *inter alia*, state and municipal politicians, as well as state officials performing their functions in exercising state authority, state servants, persons applying to the respective positions, and other persons whose activities are connected with guaranteeing the public interest, *inter alia*, with the use of funds from the state and municipal budgets. It should be noted that, in doing so, the legislature must respect the norms and principles of the Constitution, *inter alia*, the requirements arising from the constitutional principle of a state under the rule of law.

[...]

... after the legislature, under the Constitution, *inter alia*, the provision of Paragraph 3 of Article 5 thereof that state institutions serve the people, and under the constitutional principle of responsible governance, imposes the duty to declare private interests on persons, *inter alia*, on state and municipal politicians, as well as state officials performing their functions in exercising state authority, state servants, persons applying to the respective positions, and other persons whose activities are connected with guaranteeing the public interest, *inter alia*, with the use of funds from the state and municipal budgets, the constitutional principle of a state under the rule of law gives rise to the duty to establish a clear procedure for declaring such interests, so that the persons are aware of what is required by law and are able to direct their behaviour in accordance with the requirements of law when declaring their private interests.

4.5. STATE AWARDS

State awards

The Constitutional Court's ruling of 12 May 2006

Citizens of the Republic of Lithuania, citizens of foreign states, or stateless persons may be conferred awards of the State of Lithuania (orders, medals, and other decorations) in recognition of their merit to the State of Lithuania (ruling of 30 December 2003). The Seimas establishes state awards of the Republic of Lithuania (Item 18 of Article 67 of the Constitution), whereas the President of the Republic confers state awards (Item 22 of Article 84 of the Constitution). Persons who performed exceptional deeds demanding extraordinary efforts or even self-sacrifice where the said deeds provided exceptional benefits to the State of Lithuania, its society, or certain spheres of life of this country, in recognition of their merit to the State of Lithuania, are honoured in the name of the state by means of state awards.

[...]

When establishing state awards (*inter alia*, establishing the system thereof), the Seimas has broad discretion; however, it must follow the constitutional concept of state awards; the said concept implies that state awards are granted namely in recognition of merit and that the said merit should be merit to Lithuania (for the State of Lithuania, for its society, or for certain spheres of life of this country). The grounds on the basis of which persons may be awarded must be clear; such grounds must be established by means of a law. A law must also establish the procedure for nominating a person for a state award.

The constitutional concept of state awards should also be respected when granting state awards. The President of the Republic has rather broad freedom of the discretion to decide whether or not to award a proposed person. It should be stressed that the Constitution does not oblige the President of the Republic to confer a certain state award on a certain person or persons (in recognition of their certain merit); however, when conferring state awards, the President of the Republic must pay regard, *inter alia*, to the requirements for fulfilling conscientiously the duties of his/her office, and for being equally just to all, as established in Article 82 of the Constitution.

On the other hand, a law may provide that, if a person does not meet certain formal criteria established by law, he/she may not be conferred a state award, or, if he was granted a state award, he/she must be deprived of this state award.

Conferring a certain state award is not the implementation of the right or a legitimate expectation of a person, even who is without doubt of merit to Lithuania, but rather such an assessment of his/her merit where the said assessment is within the discretion of and depends on the will of the President of the Republic;

... a state award is a sign of state estimation towards a person; therefore, a state award may not be related to the provision of material, financial, or other benefits of any kind (with the exception, of course, of the order, medal, etc. itself) to an awarded person. The Constitution does not imply that a person who was conferred a state award of any kind could expect, let alone demand, any additional material, financial, or other benefits, privileges, etc. only because he/she has been conferred the award.

The constitutional institution of state awards is not identical to other constitutional institutions, *inter alia*, those related to the provision of support, care, welfare, maintenance, financial or other benefits established in the Constitution (thus, constitutionally justifiable and not regarded as privileges) to various persons.

[...]

If a person meets the requirements set by law and there are grounds provided for by law, the material and financial support, the provision of other material, financial benefits by the state to the person may be related to the same deeds (activity) that earned a person a certain state award. However, it should be stressed that, as such, the mere fact that a person was granted a state award should not serve as the grounds for allocating him/her state material and financial support, or other material and financial benefits, etc. If such a legal regulation were established, it would have to be regarded as one deviating from Paragraph 2 Article 32 of the Constitution, according to which the rights of ownership (national and municipal included) are protected by law, and if Paragraph 2 of Article 23 of the Constitution were interpreted in conjunction with the provision of Paragraph 2 of Article 128 of the Constitution, whereby the procedure for the possession, use and disposal of state-owned property is established by law, the said legal regulation would also have to be regarded as one deviating from Paragraph 2 of Article 128 of the Constitution, as well as from the constitutional principle of a state under the rule of law and the constitutional concept of state awards.

5. THE SEIMAS

5.1. THE SEIMAS AS THE REPRESENTATION OF THE NATION

The Seimas as the representation of the Nation

The Constitutional Court's ruling of 13 May 2004

Under the Constitution, the Seimas is the representation of the Nation (ruling of 30 December 2003). The Seimas is an institution of state authority executing legislative power. The constitutional nature of the Seimas, as the representation of the Nation, determines its special place in the system of institutions of the branches of state power, its functions, and its competence.

The Seimas as the representation of the Nation (Articles 2 and 4 and Paragraph 1 of Article 55 of the Constitution)

The Constitutional Court's ruling of 25 May 2004

Article 2 of the Constitution provides that sovereignty belongs to the Nation. Article 4 of the Constitution stipulates that the Nation executes its supreme sovereign power either directly or through its democratically elected representatives. According to Paragraph 1 of Article 55 of the Constitution, members of the Seimas are representatives of the Nation. Thus, under the Constitution, only the Seimas is the representation of the Nation, through which the Nation executes its supreme sovereign power. It should be stressed that, according to the Constitution, there must not be and there is no confrontation between the supreme sovereign power executed by the Nation directly and the supreme sovereign power executed by the Nation through its democratically elected representatives – members of the Seimas. Thus, under the Constitution, there must not be and there is no confrontation between the Nation and its representation – the Seimas: the Seimas implements those powers that have been assigned to it by the Nation in the Constitution adopted by the Nation.

The Seimas as the representation of the Nation and its functions

The Constitutional Court's ruling of 1 July 2004

Under the Constitution, only the Seimas is the representation of the Nation. The Seimas, as the representation of the Nation, through which the Nation executes its supreme sovereign power, acts according to the powers pursuant to the Constitution vested in the Seimas by the Nation.

The constitutional nature of the Seimas as the representation of the Nation determines its special place in the system of the institutions of the branches of state power, its functions and powers necessary to perform these functions of the Seimas. While implementing its constitutional powers, the Seimas performs the classical functions of the parliament of a democratic state under the rule of law: the Seimas passes laws (legislative function), carries out parliamentary control over executive and other state institutions (save courts) (control function), establishes state institutions, appoints and releases their heads and other state officials (founding function), approves the state budget and supervises its execution (budgetary function), etc. (ruling of 13 May 2004).

5.2. THE FUNCTIONS AND POWERS OF THE SEIMAS

5.2.1. General provisions

The powers of the Seimas are limited by the Constitution (Paragraph 2 of Article 5 of the Constitution)

The Constitutional Court's ruling of 12 July 2001

When preparing and adopting legal acts, institutions of state power must comply with the principle of a state under the rule of law, which is consolidated in the Constitution. Paragraph 2 of Article 5 of the Constitution provides that the scope of powers is limited by the Constitution. This means that the Seimas, as the legislator of laws and other legal acts, is independent inasmuch as its powers are not limited by the Constitution. The right of the Seimas to adopt, amend, supplement laws and other legal acts or declare them as null and void is indisputable; however, it may implement this by following the procedure established in the Constitution and the principles of legal compatibility. Thus, the Seimas, regulating certain relationships by means of a law, may not violate the principles and norms of the Constitution.

The Seimas is bound by its own laws

The Constitutional Court's ruling of 11 July 2002

... the Seimas is bound not only by the Constitution, but also by its own laws. Under the Constitution, laws may establish a legal regulation defining the implementation of the powers of the Seimas and, thus, binding on the Seimas; however, the Seimas is not absolutely free to subject itself to any limitations by means of laws: binding itself by means of laws, the Seimas may not violate the Constitution.

The functions and powers of the Seimas

The Constitutional Court's ruling of 13 May 2004

The constitutional powers of the Seimas are consolidated in Article 67 of the Constitution. The said article provides that the Seimas: considers and adopts amendments to the Constitution (Item 1); passes laws (Item 2); adopts resolutions on referendums (Item 3); calls elections for the President of the Republic of Lithuania (Item 4); establishes state institutions provided for by law, and appoints and releases their heads (Item 5); gives or does not give its assent to the candidate proposed by the President of the Republic for the post of the Prime Minister (Item 6); considers the programme of the Government, presented by the Prime Minister, and decides whether to give its assent to it (Item 7); on the proposal of the Government, establishes and abolishes the ministries of the Republic of Lithuania (Item 8); supervises the activities of the Government and may express no confidence in the Prime Minister or a minister (Item 9); appoints the justices and Presidents of the Constitutional Court and the Supreme Court (Item 10); appoints and releases the Auditor General and the Chairperson of the Board of the Bank of Lithuania (Item 11); calls elections to municipal councils (Item 12); forms the Central Electoral Commission and alters its composition (Item 13); approves the state budget and supervises its execution (Item 14); establishes state taxes and other compulsory payments (Item 15); ratifies and denounces international treaties of the Republic of Lithuania and considers other issues of foreign policy (Item 16); establishes the administrative division of the Republic (Item 17); establishes the state awards of the Republic of Lithuania (Item 18); issues acts of amnesty (Item 19); imposes direct rule and martial law, declares states of emergency, announces mobilisation, and adopts a decision to use the armed forces (Item 20).

It needs to be noted that the list of the constitutional powers of the Seimas consolidated in Article 67 of the Constitution is not a final one. On the one hand, various powers of the Seimas are consolidated in other articles (parts thereof) of the Constitution. For instance, Article 74 of the Constitution provides that the President of the Republic, the President and justices of the Constitutional Court, the President and justices of the Supreme Court, the President and judges of the Court of Appeal, as well as any members of the Seimas who grossly violate the Constitution or breach their oath or are found to have committed a crime, may be removed from office or have the mandate of a member of the Seimas revoked by a 3/5 majority vote of all the members of the Seimas; this is done through impeachment proceedings established in the Statute of the Seimas. Article 75 of the Constitution prescribes that the officials appointed or elected by the Seimas, with the exception of the persons specified in Article 74 of the Constitution, are dismissed from office when the Seimas expresses no confidence in them by a majority vote of all the

members of the Seimas. Under Article 106 of the Constitution, the Seimas has the right to apply to the Constitutional Court by its resolution and to request the Constitutional Court to investigate whether the legal acts indicated in Article 102 of the Constitution are not in conflict with the Constitution (and whether statutory acts are not in conflict with the Constitution and with laws) and to request a conclusion from the Constitutional Court on the issues indicated in Paragraph 3 of Article 105 of the Constitution. Under Item 11 of Article 84 and Paragraph 5 of Article 118 of the Constitution, the Seimas gives or does not give its assent to a candidate for the post of the Prosecutor General of the Republic of Lithuania or his/her release from duties; according to Item 14 of Article 84 of the Constitution, the Seimas gives or does not give its assent to candidates for the posts of the Chief of the Army and the Head of the Security Service. Under Article 100 of the Constitution, the Seimas may give its consent to hold the Prime Minister or a minister criminally liable, to detain him/her, or to have his/her liberty restricted otherwise. Under Paragraph 1 of Article 128 of the Constitution, the Seimas adopts decisions concerning state loans and other basic property liabilities of the state. Also, additional powers of the Seimas are established in various articles (parts thereof) of the Constitution.

On the other hand, attention should be paid to the fact that some powers of the Seimas that are established in Article 67 of the Constitution are particularised and defined in more detail in other articles (parts thereof) of the Constitution. For example, the provision of Item 9 of Article 67 of the Constitution that the Seimas, *inter alia*, “may express no confidence in the Prime Minister or a Minister” is particularised by the provision “Upon considering the response of the Prime Minister or the Minister to the interpellation, the Seimas may decide that the response is not satisfactory, and, by a majority vote of half of all the Members of the Seimas, may express no confidence in the Prime Minister or the Minister” of Paragraph 3 of Article 61 of the Constitution. The provision of Item 14 of Article 67 of the Constitution, whereby the Seimas, *inter alia*, supervises the execution of the state budget, is particularised in Item 4 of Article 94 of the Constitution, according to which the Government, *inter alia*, submits to the Seimas a report on the execution of the budget; thus, under the Constitution, the Seimas has the powers to approve this report. The provision of Item 20 of Article 67 of the Constitution, whereby the Seimas imposes direct rule and martial law, declares states of emergency, announces mobilisation, and adopts a decision to use the armed forces, is particularised in Paragraph 1 of Article 142 of the Constitution, under which the Seimas imposes martial law, announces mobilisation or demobilisation, or adopts the decision to use the armed forces when the need arises to defend the Homeland or to fulfil the international obligations of the State of Lithuania, as well as in Paragraph 1 of Article 144 of the Constitution, according to which, when a threat arises to the constitutional system or social peace in the state, the Seimas may declare a state of emergency throughout the territory of the State or in any part thereof, where the period of the state of emergency may not exceed six months. The powers of the Seimas established in Article 67 of the Constitution are also particularised and defined in more detail in other articles (parts thereof) of the Constitution.

It should also be noted that, under the Constitution, the powers of the Seimas may be established and are established not only in the Constitution, but also in laws. In some cases, the fact that certain powers of the Seimas consolidated in the Constitution may be specified in laws in a more concrete manner is directly indicated in the Constitution. For instance, as mentioned before, under Item 16 of Article 67 of the Constitution, the Seimas ratifies and denounces international treaties of the Republic of Lithuania and considers other issues of foreign policy; Paragraph 1 of Article 138 of the Constitution stipulates which international treaties of the Republic of Lithuania are ratified and denounced by the Seimas; while Paragraph 2 of the same article provides that laws, as well as international treaties, may also provide for other cases when the Seimas ratifies international treaties of the Republic of Lithuania. Under Item 3 of Article 67 of the Constitution, the Seimas adopts resolutions on referendums, while Paragraph 3 of Article 9 of the Constitution provides that a referendum is also called if not less than 300 000 citizens with the electoral right so request and, under Paragraph 2 of the same article, the Seimas calls a referendum in cases established by law. While implementing the right, which is directly consolidated in the Constitution, to particularise its certain constitutional powers by means of laws, the Seimas must pay regard to the norms and principles of the Constitution.

The Seimas, as the representation of the Nation, also has the right to establish, by means of a law, such its powers that are not *expressis verbis* indicated in the Constitution, but which, however, are designed for the implementation of the constitutional functions of the Seimas. Implementing its right, directly established in the Constitution, to particularise its certain constitutional powers by means of laws, as well as establishing, by means of laws, its powers that are not *expressis verbis* indicated in the Constitution, the Seimas is bound by the Constitution. The fact that the Seimas, while passing laws, is bound by the Constitution, as well as by its own laws, is an essential element of the constitutional principle of a state under the rule of law (rulings of 6 December 2000, 14 January 2002, and 24 January 2003).

It is clear from the constitutional provisions in which the powers of the Seimas are established that the Seimas, while implementing its constitutional powers, performs the classical functions of the parliament of a democratic state under the rule of law: the Seimas passes laws (legislative function), carries out parliamentary control over executive and other state institutions (save courts) (control function), establishes state institutions, appoints and dismisses their heads and other state officials (founding function), approves the state budget and supervises its execution (budgetary function), etc.

The said functions of the Seimas as the representation of the Nation of a democratic state under the rule of law are constitutional values. Under the Constitution, the legislature and other lawmaking subjects may not establish any such a legal regulation that would deny the said constitutional functions of the Seimas or would restrict the possibilities of performing them, since thereby the Seimas, the representation of the Nation, would be hindered from effective functioning in the interests of the Nation and the State of Lithuania.

In order that it might properly perform its parliamentary functions and implement its constitutional powers, the Seimas, the representation of the Nation, must have exhaustive and objective information about the processes taking place in the state and society, as well as about the situation in various areas of the life of the state and society and arising problems. The availability of such information is a necessary precondition for the effective activity of the Seimas in the interests of the Nation and the State of Lithuania, as well as for the proper fulfilment of its constitutional duty.

The constitutional functions of the Seimas and the powers of the Seimas consolidated in the Constitution presuppose the powers of the Seimas in every case when it becomes necessary to decide a certain question that falls under the constitutional competence of the Seimas and to seek the exhaustive and objective information needed to adopt particular decisions. The necessity to have such information means that, if necessary, the Seimas can rely not only on publicly known information or that presented to it by state institutions and other persons, but also that it can resort to concrete actions in order to receive such exhaustive and objective information. Thus, if necessary, the Seimas may conduct research by itself in order to have exhaustive and objective information about the processes taking place in the state and society, as well as about the situation in various areas of the life of the state and society and arising problems. This activity of the Seimas, as a parliament, logically follows from the mission that it has, as well as from its constitutional functions and constitutional powers.

The right of the Seimas to receive information that is necessary to exercise its constitutional powers (also see 5.4. The structure of the Seimas, the ruling of 4 April 2006 (“Ad-hoc investigation commissions of the Seimas”))

The Constitutional Court’s ruling of 4 April 2006

Under the Constitution, the Seimas is obliged to establish such a legal regulation that would create the legal preconditions for receiving information needed to perform its constitutional powers.

In its ruling of 13 May 2004, the Constitutional Court held that, as the Seimas has the powers in every case, when it becomes necessary to decide a certain issue falling under the constitutional competence of the Seimas, to seek the exhaustive and objective information needed to adopt particular decisions, it also has the discretion to form such its structural subunits that would be assigned to conduct research in order to obtain exhaustive and objective information about the processes taking place in the state and society and about the situation in various areas of the life of the state and society. In the same ruling, the Constitutional

Court also held that, as the Seimas, under the Constitution, has the discretion to establish its structure, it also has the discretion to form its structural subunits and the discretion to establish the names of its structural subunits, their competence, composition, interrelations among them, their term of activity, as well as to formulate certain tasks for them; while establishing this, the Seimas is bound by the norms and principles of the Constitution.

Under Article 76 of the Constitution, the structure and procedure of activities of the Seimas are established by the Statute of the Seimas, which has the force of a law. In this context, it should be mentioned that it is impossible to interpret only linguistically the provision that the structure and procedure of activities of the Seimas are established by the Statute of the Seimas, i.e. only as meaning that the powers of the structural subunits of the Seimas may be established only in the Statute of the Seimas; for instance, in order that it could perform its constitutional functions, the Seimas may also require to form such its structural subunits that would have the powers with regard to various state or municipal institutions, their officials, or other persons. Such powers may be related to the receipt of information from state or municipal institutions, their officials, or from other persons about the processes taking place in the state and society, as well as about the situation in various spheres of the life of the state and society and arising problems; the receipt of this information cannot be dependent on the fact whether or not particular institutions or other persons are accountable to the Seimas; where it is necessary to establish the authoritative empowerments of a structural subunit of the Seimas in regard of the institutions, their officials, or other persons that are not accountable to the Seimas (including the right to demand the information the submission whereof is regulated in laws), such powers of the structural subunit of the Seimas must be established by means of a law (ruling of 13 May 2004).

It needs to be noted that, in a democratic state under the rule of law, it is not allowed to deny the powers of the parliament – the representation of the Nation to take measures, *inter alia*, to form the structural subunits of the parliament for this purpose, and to commission them to conduct necessary research in order to receive information about the processes taking place in the state and society, as well as about the situation in various areas of the life of the state and society and arising problems; otherwise, the proper fulfilment of the functions of the parliament – the representation of the Nation and the adoption of necessary decisions would not be ensured. The said powers arise from the very essence of parliamentary democracy and are one of the features of parliamentarism. In the practice of the parliaments of democratic states under the rule of law, the possibility for parliaments to take measures in order to receive information about processes taking place in the state and society, as well as about the situation in various areas of the life of the state and society and arising problems is also implemented by means of such institutions as ad hoc commissions (which are assigned to conduct certain research) formed by parliaments, parliamentary hearings, deliberations, etc.

The decisions of the Seimas

The Constitutional Court's decision of 15 May 2009

The Constitution, constitutional laws, laws, as well as the Statute of the Seimas, which has the force of a law, bind the Seimas and each member of the Seimas when they pass laws and perform other functions (rulings of 4 April 2006 and 22 February 2008).

The majority principle is among the democratic principles of adopting decisions in the Seimas (rulings of 22 July 1994 and 4 April 2006). The political will of the majority of the members of the Seimas is reflected in decisions adopted by the Seimas (conclusion of 31 March 2004 and the ruling of 4 April 2006). Under the Constitution, the will of the Seimas regarding the adoption of particular decisions may not be expressed otherwise than by vote of the members of the Seimas at a sitting of the Seimas and the adoption of a particular legal act.

It also needs to be noted that, under the Constitution, every decision of the Seimas, regardless of its expression (legal form), can be impugned before the Constitutional Court with regard to the compliance of this decision (act of the Seimas) with higher-ranking legal acts, *inter alia* (and, first of all), with the Constitution. Under the Constitution, the subjects specified in Paragraph 1 of Article 106 of the

Constitution, *inter alia*, not less than 1/5 of all the members of the Seimas, i.e. a group of not less than 29 members of the Seimas, can do so.

The duty of the Seimas to adopt decisions that are specified in the Constitution

The Constitutional Court's decision of 15 May 2009

The activity of a member of the Seimas, which is based on the constitutional principle of the free mandate of a member of the Seimas, and the powers of the Seimas as the representation of the Nation may not be opposed. While implementing its constitutional powers, the Seimas has the duty to adopt particular decisions, as, for instance, under the provisions of Item 4 of Article 67 and Article 80 of the Constitution, the Seimas calls a regular election of the President of the Republic, which is held on the last Sunday two months before the expiry of the term of office of the President of the Republic; according to the provisions of Paragraph 3 of Article 59 of the Constitution, the Seimas adopts a resolution regarding the loss of the mandate of a member of the Seimas who either does not take the oath according to the procedure established by law or takes a conditional oath, etc. Consequently, under the Constitution, all the members of the Seimas, as representatives of the Nation, not only acquire particular rights, but they must also perform certain duties stemming from the Constitution and the laws not in conflict with it.

The prerogatives of the Seimas to approve the state budget, to establish taxes and other compulsory payments, and to establish the list of constitutional laws

The Constitutional Court's ruling of 11 July 2014

... under the Constitution, certain laws may not be adopted by referendum, as, for instance:

– under Item 14 of Article 67 of the Constitution, the Seimas approves the state budget and supervises its execution; Article 130 of the Constitution provides that the Government draws up a draft state budget and presents it to the Seimas not later than 75 days before the end of the budget year; under Paragraph 1 of Article 131 of the Constitution, the draft state budget is considered by the Seimas and is approved by law before the start of the new budget year; as held in the Constitutional Court's ruling of 15 February 2013, the budgetary function of the Seimas is its classical function, and it is one of the most important functions of the parliament of a democratic state under the rule of law;

– under Item 15 of Article 67 of the Constitution, the Seimas establishes state taxes and other compulsory payments; the Constitutional Court has held on more than one occasion that the Constitution consolidates the prerogative of the Seimas to establish taxes (rulings of 9 October 1998 and 15 March 2000, the decision of 20 September 2005, and the ruling of 16 December 2013), as well as that state taxes and other compulsory payments may be established only by the Seimas (rulings of 26 April 2001, 3 June 2002, and 17 November 2003);

– under Paragraph 3 of Article 69 of the Constitution, the Seimas establishes the list of constitutional laws by a 3/5 majority vote of the members of the Seimas; as held in the Constitutional Court's ruling of 1 December 1994, under the Constitution, the list of constitutional laws may be established only by the Seimas.

The right of the Seimas to receive information that is necessary to exercise its constitutional powers; requirements for a legal regulation governing the submission of information, *inter alia*, an activity report, by state institutions to the Seimas

The Constitutional Court's ruling of 30 December 2015

The Constitutional Court has held that, in order that it might properly perform its parliamentary functions and implement its constitutional powers, the Seimas, the representation of the Nation, must have exhaustive and objective information about the processes taking place in the state and society, as well as about the situation in various areas of the life of the state and society and problems arising therein; the availability of such information is a necessary precondition for the effective activity of the Seimas in the interests of the Nation and the State of Lithuania, as well as for the proper fulfilment of its constitutional duty (rulings of 13 May 2004 and 4 April 2006). Under the Constitution, the Seimas is obliged to establish

such a legal regulation that would create legal preconditions for receiving the information necessary to perform its constitutional powers (ruling of 4 April 2006).

The Constitution, *inter alia*, Item 18 of Article 84 thereof, which prescribes that the President of the Republic makes annual reports at the Seimas, *inter alia*, on the situation in Lithuania, Paragraph 1 of Article 101 thereof, which provides that, at the request of the Seimas, the Government or individual ministers must give an account of their activities to the Seimas, and Paragraph 2 of Article 134 thereof, under which the Auditor General submits a conclusion to the Seimas concerning the report on the annual execution of the budget, implies that the Seimas, as the representation of the Nation, is provided with different information about the life of the state and society, as well as the activity of various state institutions. The receipt of such information is linked with the striving for open society, as consolidated in the Preamble to the Constitution, also with the principle, laid down in Article 1 of the Constitution, that the State of Lithuania is a republic, as well as with the principles of parliamentary democracy established in various provisions of the Constitution.

In the context of the constitutional justice case at issue, it should be noted that the constitutional separation and interaction of state powers, as well as the function of parliamentary control and budgetary function implemented by the Seimas, imply the possibilities of the legislature to regulate the information, *inter alia*, the annual activity report of an institution, which is submitted to the Seimas, as the representation of the Nation, for having access to and considering the information submitted in proper ways and under a particular procedure not only by the heads of the Government and other executive authorities, but also by the heads of those institutions which, under Paragraph 1 of Article 5 of the Constitution, are not classified as either the executive or legislative powers. When doing that, the legislature is bound by the Constitution. The principle of the separation of powers, as consolidated in Article 5 (Paragraphs 1 and 2 thereof) and other articles of the Constitution, and the functions of the Seimas, as reflected in the whole of the powers conferred on the Seimas under Article 67, do not imply, *inter alia*, with regard to information and, thus, also activity reports, to be submitted by state institutions to the Seimas, any such a legal regulation under which, after the head of a state institution submits the relevant information in the form of a report, the procedure of accounting to the Seimas by the institution (or its head) would be considered not completed until the Seimas has approved the submitted report, i.e. under which it would be required that the Seimas not only becomes acquainted with and considers the information provided in the report, but also adopts a special resolution on approving the submitted report.

... in a democratic state under the rule of law, officials and their institutions must observe laws and follow law in their activities; while carrying out the functions that are important to society and the state, state institutions and officials must not face any threat if they fulfil their duties without violations of laws. ... where state officials perform their functions while observing the Constitution and law and acting in the interests of the Nation and the State of Lithuania, they must be protected against any pressure and unjustified interference with their activities, and, where they conscientiously perform their duties, they must not be subject to any threats directed against their person, rights, or freedoms. When interpreting Paragraphs 1 and 2 of Article 5 and Article 67 of the Constitution, *inter alia*, in the context of the constitutional principle of a state under the rule of law, it should be noted that, if the Seimas were vested with the powers to adopt a resolution on giving or not giving its approval to annual activity reports submitted by the heads of state institutions, these heads would be not protected against possible pressure or unjustified interference with their activities, despite the fact that they would perform their functions in observance of the Constitution and law and while acting in the interests of the Nation and the State of Lithuania; such a legal regulation would be incompatible with the Constitution, *inter alia*, Paragraphs 1 and 2 of Article 5 and Article 67 thereof; and the establishment of such a legal regulation would unreasonably expand the constitutional powers of the Seimas.

[...]

... it is impossible to interpret Article 76 of the Constitution only linguistically, i.e. as meaning that it is enough that only the Statute of the Seimas consolidates the powers of the Seimas or its structural subunits (*inter alia*, committees) that are significant to its work to receive, regularly or upon request, the information

from the state institutions (with the exception of courts), *inter alia*, the state officials appointed by the Seimas or the President of the Republic or their headed institutions, concerning their activity, *inter alia*, in the form of a report, as well as establishes (explicitly or partially implicitly) the obligations for these officials or the institutions headed by them to provide the information, *inter alia*, in the form of a report, to the Seimas on a regular basis or upon request. Such powers and obligations of the Seimas, *inter alia*, related to the form of reports, their submission and receipt, are applicable to the officials who, according to their functions or the functions fulfilled by the institutions they head and thus having the guarantees of independence, must be independent, should be established not only in the Statute of the Seimas, but also by the law consolidating the legal situation of the respective state institution.

[...]

At the same time, it needs to be noted that, as mentioned before, in a democratic state under the rule of law, officials and their institutions must observe laws and follow law in their activities; in the area of the legal regulation of the activities of state institutions and officials, the principles of a state under the rule of law are implemented, among other things, by combining trust in state officials with public control over their activities and with their responsibility to the public; the legal system must provide for the possibility of removing from office those state officials who violate laws, who raise personal or group interests above the interests of society, or who discredit state authority by their actions. Thus, it needs to be emphasised that, while considering the annual activity report of an institution at the Seimas, or when it transpires from the information submitted in the annual activity report of an institution during its consideration at the Seimas that the head of the state institution, who submitted the said report, may have violated laws and may have raised personal or group interests above the interests of society, the separation of powers in Lithuania (from the aspect of separation and coordination of the powers of the Seimas and the President of the Republic to appoint and dismiss heads (officials) of state institutions, as, *inter alia*, reflected in Article 67 of the Constitution), as consolidated in the Constitution, *inter alia*, Paragraphs 1 and 2 of Article 5 thereof, does not prevent the legislature from establishing also such a legal regulation for dismissing of the heads (officials) of state institutions, who are appointed by the Seimas (as well as by the President of the Republic upon assent of the Seimas), under which the Seimas could *in corpore*: (1) consider and adopt a resolution on no confidence in such a head of a state institution, as provided for in Article 75 of the Constitution (and in the relevant provisions of the Statute of the Seimas); (2) by means of an act (statement, declaration, resolution, etc.), provided for in the Statute of the Seimas, on expressing the will of the representation of the Nation concerning the issues significant to the state, to publicly address the President of the Republic and propose that the head of a state institution who was appointed by the President of the Republic upon assent of the Seimas be dismissed from his/her office by applying the appropriate grounds of dismissal provided for by law (these grounds may not include the application to the President by the Seimas, as this application is not binding on the President of the Republic). However, the sole refusal by the Seimas to approve an annual activity report submitted to the Seimas (or a legitimate refusal by the head of a state institution to submit information requested by the Seimas) may not serve as a ground for the Seimas to consider and adopt a resolution on expressing no confidence in the head of the state institution where the head of a state institution concerned was appointed by the Seimas (or to submit the proposal to the President of the Republic that the head of a state institution be dismissed from office where the head concerned was appointed by the President upon the assent of the Seimas).

5.2.2. Legislation

The powers of the Seimas to pass laws and other legal acts

The Constitutional Court's ruling of 28 September 2011

... under the Constitution, the Seimas passes constitutional laws, laws, resolutions on the implementation of laws, and other legal acts (Articles 67, 69, and 70 and Item 2 of Article 94 of the Constitution). The Constitutional Court has held that passing laws is one of the most important functions

of the Seimas as the representation of the Nation, as well as its constitutional competence (ruling of 19 June 2002).

[...]

The Constitutional Court has ... held that, under the Constitution, the Seimas, as the representation of the Nation and the institution of legislative power, may pass laws and other legal acts regulating most varied social relationships (ruling of 4 April 2006).

... the Seimas, as the institution of legislative power, has broad discretion in forming the state policy in various areas of social life ... as well as in respectively regulating, by legal acts, social relationships in these areas. While implementing its powers to form the state policy in certain areas of public and state life ... the Seimas is obliged to pay regard to the norms and principles of the Constitution.

5.2.3. The budgetary function

See 11. The state budget and finances, 11.1. The state budget. The property liabilities of the state. Taxes.

5.2.4. Parliamentary control

Also see 7. The Government.

The right of a member of the Seimas to submit inquiries as a form of parliamentary control (Paragraph 1 of Article 61 of the Constitution)

The Constitutional Court's ruling of 30 June 1994

... the provision of Paragraph 1 of Article 61 of the Constitution [establishes] the right of the members of the Seimas to submit inquiries as a form of parliamentary control. Among the "state institutions formed or elected by the Seimas" that are mentioned in the said article, an exception is applied only to courts, because their independence is guaranteed under Articles 109 and 114 of the Constitution.

The powers of the Seimas to exercise parliamentary control over the National Audit Office

The Constitutional Court's ruling of 6 December 1995

... the National Audit Office, a state institution exercising economic financial control, [supervises] the lawfulness of the possession and use of state-owned property and the execution of the state budget. It is accountable directly to the Seimas, which exercises parliamentary control over this institution.

Granting the Government the powers to act and exercising control over its activities (for more on this matter, see 7. The Government, 7.2. The formation of the Government. The return of powers. Resignation)

The Constitutional Court's ruling of 10 January 1998

The Seimas, by giving its assent to a programme of the Government, confers the powers on the Government to act; the constitutional norms regulating the activity of the Government, as well as those consolidating the principle of the responsibility of the Government to the Seimas, are thus implemented: it has been established in the constitutional structure of the branches of power that only the Government having the confidence of the Seimas may exercise its powers. The legal form of conferring such powers is voting in the Seimas for giving the assent to a programme of the Government.

[...]

... by expressing its confidence in the programme of the Government, the Seimas takes the obligation to supervise as to how the Government will be acting in implementing its own programme. A programme of the Government is the basis of the political and legal responsibility of the Government to the Seimas because the Government is jointly and severally responsible to the Seimas for its general activities. The

Seimas that has conferred the powers on the Government to act may express no confidence in the Government or the Prime Minister. The consequence of the expression of no confidence is the resignation of the Government.

[...]

Conferring the powers on the Government to act and exercising control over its activities are an important sphere of the competence of the Seimas. Article 67 of the Constitution provides for the following prerogatives of the Seimas: the Seimas gives or does not give its assent to the candidate proposed by the President of the Republic for the post of the Prime Minister; considers the programme of the Government, presented by the Prime Minister, and decides whether to give its assent to it; supervises the activities of the Government and may express no confidence in the Prime Minister or a minister, etc. Under Paragraph 1 of Article 96 of the Constitution, the Government is jointly and severally responsible to the Seimas for the general activities of the Government. ...

[...]

... by giving its assent to the programme of the Government, the Seimas expresses its confidence in the Government in principle for the period until the powers of the Seimas expire. Naturally, this does not mean that, if the Government resigns, the same programme will be approved again.

Granting the Government the powers to act (Paragraph 5 of Article 92 of the Constitution)

The Constitutional Court's ruling of 20 April 1999

The personal composition of the Government is formed by the Prime Minister and by the President of the Republic. However, the mere approval of the composition of the Government is not enough so that the Government could begin to act. The Government must have the confidence of the Seimas. Therefore, Paragraph 5 of Article 92 of the Constitution provides that "a new Government shall receive the powers to act after the Seimas gives assent to its programme by a majority vote of the Members of the Seimas participating in the sitting". The assent to the programme of the Government means that the Government is empowered to implement the provisions of its programme.

[...]

... the Government is a collegial institution that is jointly and severally responsible to the Seimas for its general activities. Therefore, under the Constitution, the beginning of the powers of the Government is linked with the assent given by the Seimas to its programme but not with the personal composition of the Government. Considering whether to give its assent to a programme of the Government, the Seimas does not discuss the issues of the personal composition of the Government, since the appointment of ministers is the prerogative of the Prime Minister and the President of the Republic. Voting for giving its assent to a programme of the Government, the Seimas expresses its consent in order that the Government would manage national affairs in the manner as provided for by such a programme. As long as the Seimas does not give its assent to a programme of the Government, the Government has no powers to act.

[...]

... the fact that the Seimas gives its assent to the programme of the Government by which the Government receives its powers to act consolidates the principle of expressing confidence in the Government by the Seimas *in corpore*.

The powers of the Seimas to supervise the activity of the Government (Item 9 of Article 67 and Article 101 of the Constitution)

The Constitutional Court's ruling of 20 April 1999

The Seimas not only empowers the Government to act, but also, conforming to Item 9 of Article 67 of the Constitution, supervises the activities of the Government. For instance, under Paragraph 1 of Article 101 of the Constitution, at the request of the Seimas, the Government or individual ministers must give an account of their activities to the Seimas. The Seimas, by a majority vote of all the members of the Seimas and by secret ballot, may express no confidence in the Government (Item 2 of Paragraph 3 of

Article 101 of the Constitution). The Constitution also provides for other ways as to how the Seimas might carry out the supervision of the Government.

The composition of the Government may change due to various reasons. Under Paragraph 2 of Article 101 of the Constitution, when more than half of the ministers are replaced, the Government must once again receive its powers from the Seimas; otherwise, the Government must resign. The institution of receiving powers once again is one of the forms of the supervision of the Government by the parliament. By applying such a form, the Seimas can verify whether the programme of the Government that was approved by the Seimas is still carried out after more than half of the ministers are replaced. The procedure for receiving powers once again is regulated by the Statute of the Seimas.

Such a constitutional regulation of the powers of state institutions and their interrelations in the course of forming the Government and granting it powers once again reflects the principle of the separation and balance of state powers, as established in the Constitution.

... the fact that the Seimas gives its assent to the programme of the Government by which the Government receives its powers to act consolidates the principle of expressing confidence in the Government by the Seimas *in corpore*. Changing the area of governance entrusted to a minister is important from the aspect of his/her responsibility. From the standpoint of the interrelations between the Government *in corpore* and the Seimas, it is not the replacement of individual ministers in the Government (in cases where a member of the Government is appointed to head another ministry etc.) that is important, but rather the fact whether due to such changes more than half of the new ministers are replaced in the Government. In such a case, the Seimas has a constitutional ground for verifying whether the Government continues to carry out the programme that was approved by the Seimas.

Expressing no confidence in an official appointed or elected by the Seimas as one of the ways of parliamentary control (Article 75 of the Constitution)

The Constitutional Court's ruling of 24 January 2003

Article 75 of the Constitution prescribes: "The officials appointed or elected by the Seimas, with the exception of the persons specified in Article 74 of the Constitution, shall be dismissed from office when the Seimas expresses no confidence in them by a majority vote of all the Members of the Seimas."

The said article of the Constitution consolidates the right of the Seimas to dismiss from office those officials who have been appointed or elected by the Seimas, with the exception of the persons specified in Article 74 of the Constitution. This is done by following a special parliamentary procedure entailing the submission of a motion of no confidence. No confidence is expressed by a majority vote of all the members of the Seimas.

The institution of the expression of no confidence is not only one of the means of parliamentary control exercised by the Seimas, but also an important guarantee of the activity of the officials appointed or elected by the Seimas, since such officials, provided there are no grounds due to which they may not hold their office on the whole, may be dismissed from office prior to the expiry of the term of their powers in cases where more than half of all the members of the Seimas vote in favour of no confidence. Expressing no confidence is a ground for dismissing an official appointed or elected by the Seimas from office; expressing no confidence must be linked to the assessment of the activity of the official concerned; therefore, the regulation of the procedure for the parliamentary expression of no confidence must be such that would ensure the due process of law that, *inter alia*, means that officials against whom no confidence is expressed should have a real opportunity to present to the Seimas their explanations and to counter, at the sitting of the Seimas, all arguments on which the motion of no confidence is based.

Parliamentary democracy; interaction among the branches of state power; parliamentary control

The Constitutional Court's decision of 21 November 2006

The Constitution consolidates parliamentary democracy. However, parliamentary democracy is not "the convent rule", it is not a system where the parliament directly organises the work of other state or

municipal institutions or may, at any time, interfere with the activities of any state or municipal institutions (their officials) that implement public power. Nor is parliamentary democracy a system where the parliament, at the slightest pretext, may exert control over any decisions of such institutions (their officials), initiate the application of sanctions against certain persons, let alone adopt decisions by itself for the state or municipal institutions (their officials) that have particular competence, i.e. adopt such decisions that can be adopted only by the state institutions (their officials) that have particular competence, for example, courts, prosecutors, the National Audit Office, the institutions of pretrial investigation, or the subjects of the operational activity provided for in laws.

The model of parliamentary democracy consolidated in the Constitution is rational and moderate. Such a model is not based exclusively on the control exercised by the parliament or on interinstitutional checks and balances; in parliamentary democracy, interfunctional partnership, which is based, *inter alia*, on trust, plays a role of no less importance. It has been held in the acts of the Constitutional Court that, when the general functions and tasks of the state are performed, there exists interfunctional partnership among state institutions, as well as reciprocal control and balance (rulings of 10 January 1998, 21 April 1998, and 9 May 2006). The Constitutional Court has also held that “interaction among the branches of state power may not be treated as their conflict or competition; thus, also the checks and balances that the judicial branch (institutions thereof) and other branches of state power (institutions thereof) have towards each other may not be treated as the mechanisms of the opposition of the branches of power” (ruling of 9 May 2006).

A different interpretation of the provisions of the Constitution that consolidate the control function performed by the Seimas (*inter alia*, the provisions substantiating the possibility of forming ad hoc investigation commissions of the Seimas) would unavoidably deny the constitutional principles of responsible governance, of the separation of powers, of a state under the rule of law, and of democracy, as well as the striving for an open, harmonious, and just civil society, as proclaimed in the Preamble to the Constitution; such a different interpretation would create the preconditions for instability in the governance of the state and in the management of public affairs, as well as the preconditions for violating the rights and freedoms, as well as the legitimate interests and legitimate expectations of a person, and for violating other values consolidated, defended, and protected by the Constitution.

The powers of the Seimas to exercise parliamentary control

The Constitutional Court's ruling of 16 May 2019

... under the Constitution, the Seimas exercises parliamentary control over the Government (ruling of 24 December 2002).

Thus, the power of the Seimas, consolidated in Item 14 of Article 67 of the Constitution, to supervise the execution of the state budget means not only that the Seimas, under Item 4 of Article 94 of the Constitution, approves a report on the execution of the budget, but also that the Seimas supervises the execution of the state budget by means of the forms of parliamentary control over the Government that are established by the Constitution.

In this context, it should be noted that the National Audit Office is an institution exercising economic and financial control, which supervises the lawfulness of the possession and use of state-owned property and the execution of the state budget; it is accountable directly to the Seimas, which exercises parliamentary control over this institution (ruling of 6 December 1995). Thus, the power of the Seimas, consolidated in Item 14 of Article 67 of the Constitution, to supervise the execution of the state budget also means that the Seimas supervises the execution of the state budget by means of the forms of parliamentary control over the State Audit Office that are established by the Constitution.

It should also be noted that, in exercising its power under Item 14 of Article 67 of the Constitution to supervise the execution of the state budget, the Seimas, while having regard to the Constitution, *inter alia*, the principles of responsible governance and a state under the rule of law, which are consolidated in the Constitution, may also exercise parliamentary control over the institutions that have been founded by means of laws, are accountable to the Seimas, and are independent managers of state budget appropriations.

5.2.5. The establishment of institutions and the appointment of officials

The powers of the Seimas to form the Central Electoral Commission and to change its composition, as well as the right of control arising from such powers (Item 13 of Article 67 of the Constitution)

The Constitutional Court's ruling of 30 June 1994

The Central Electoral Commission is an institution formed by the Seimas (Item 13 of Article 67 of the Constitution); therefore, the Seimas has a certain right to exercise control over this institution insofar as this is in line with the provisions pertaining to the limitation of the powers of state institutions. It is primarily based on the provision of Paragraph 1 of Article 61 of the Constitution, which establishes the right of the members of the Seimas to submit inquiries as a form of parliamentary control. Among the "state institutions formed or elected by the Seimas" that are mentioned in the said article, an exception is applied only to courts, because their independence is guaranteed in Articles 109 and 114 of the Constitution. Such independence of the Central Electoral Commission is not envisaged in the Constitution.

Secondly, the Seimas has certain possibilities of exercising control over the Central Electoral Commission; such possibilities are expressed in the right vested in the Seimas to change the composition of the said commission, as consolidated in Item 13 of Article 67 of the Constitution. It should be noted that the prerogative of the Seimas to change the composition of the Central Electoral Commission is not defined by any criteria in the Constitution; however, the said commission is limited by particular provisions of [the law], which has been adopted by the Seimas itself.

Finally, Article 107 of the Constitution establishes the right of the Seimas to adopt itself a final decision only in cases where election laws are violated. Such a decision of the Seimas must be based on the respective conclusion of the Constitutional Court. In case of doubt as to whether there were the violations of election laws during the elections of the President of the Republic or the elections of the members of the Seimas, under Paragraph 5 of Article 106 of the Constitution, the right to request the Constitutional Court to give a conclusion is vested in the Seimas, and, as regards an election to the Seimas, the President of the Republic of Lithuania also has such a right.

The powers of the Seimas to establish and dissolve ministries (Item 8 of Article 67 of the Constitution)

The Constitutional Court's ruling of 3 June 1999

In establishing the functions and powers of the institutions of legislative power and those of executive power in the Constitution, interaction between such functions and powers is also provided for. Such a norm is consolidated in Item 8 of Article 67 of the Constitution: the Seimas "shall, upon the proposal of the Government, establish and abolish the ministries of the Republic of Lithuania". ...

[...]

Item 8 of Article 67 of the Constitution consolidates the right of the Seimas to establish and abolish ministries. The implementation of such powers of the Seimas is bound by the concrete powers of the Government that are consolidated in the Constitution: if the Government does not present a particular proposal, the Seimas may not adopt a decision whether to establish or abolish a ministry. Thus, this norm of the Constitution ensures the balance of power between the legislative and executive branches.

The powers of the Seimas to appoint and release the heads of the state institutions that are provided for by law (Item 5 of Article 67 of the Constitution)

The Constitutional Court's ruling of 24 January 2003

Under Item 5 of Article 67 of the Constitution, the Seimas establishes state institutions provided for by law, and appoints and releases their heads.

When interpreting Item 5 of Article 67 of the Constitution in the context of the case at issue, it should be noted that this item means, *inter alia*, that the Seimas has the powers to provide in a law for the state

institutions the heads of which are appointed and released by the Seimas itself, and that the Seimas has the powers to appoint and release the heads of such institutions. Under Item 5 of Article 67 of the Constitution, the Seimas may release from duties the heads of the state institutions that are provided for in laws only on the grounds for release from duties, as established in the Constitution and/or laws, and by following the procedure for release from duties, as established in the Constitution and/or laws. When releasing from duties those heads of the state institutions that are provided for in laws, whom it appointed itself, the Seimas must act on such a basis and follow such a procedure established in laws where the said basis and procedure are not in conflict with the Constitution. Otherwise, Item 5 of Article 67 of the Constitution would be violated.

Under the Constitution, a legal act releasing from duties the head of a state institution provided for by law, where the said head was appointed by the Seimas, is always an individual legal act; therefore, the form of such a legal act is not that of a law; such an act is a different act of the Seimas, i.e. a substatutory legal act. Under Paragraph 2 of Article 70 of the Constitution, such legal acts of the Seimas are signed by the Speaker of the Seimas. The said acts come into force on the day following their publication, unless the acts themselves establish another procedure for their entry into force. Under the Constitution, it is not permitted to release from duties, by law, the head of a state institution provided for by law where the said head was appointed by the Seimas, as this could lead to such a legal situation where the Seimas, which has the constitutional powers to dismiss the head of a state institution provided for by law where the said head was appointed by the Seimas, would not be able to implement such powers alone: as any other law, a law releasing from duties the head of a state institution provided for by law where the said head was appointed by the Seimas must be submitted to the President of the Republic for signing and promulgation; the President of the Republic is entitled not to sign such a law and may, on reasonable grounds, refer it back to the Seimas for reconsideration; a law reconsidered by the Seimas would be deemed adopted only if the amendments and supplements submitted by the President of the Republic are adopted, or if more than half of all the members of the Seimas vote for the law.

If the head of a state institution provided for by law where the said head was appointed by the Seimas is released from duties by law, the powers of the Seimas that are established in Item 5 of Article 67 of the Constitution to release from duties the heads of state institutions provided for by law where the said heads were appointed by the Seimas would be limited; therefore, the constitutional principle of the separation of powers would be violated simultaneously.

The powers of the Seimas in appointing and releasing judges (Item 10 of Article 67 and Paragraphs 2 and 3 of Article 112 of the Constitution)

The Constitutional Court's decision of 15 May 2009

The Constitution establishes such a procedure of the appointment and release of judges and presidents of courts of general jurisdiction and specialised courts of various levels under which the said judges and presidents of courts are appointed and released by the institutions of other branches of state power – executive power and legislative power; thus, they are appointed and released, correspondingly, by the President of the Republic and the Seimas, i.e. the institutions that are formed on a political basis.

[...]

... legislative power also participates in the course of appointing and releasing justices and the President of the Supreme Court and judges and the President of the Court of Appeal. The constitutional powers of the Seimas to appoint and release judges are consolidated in the provisions of Paragraphs 2 and 3 of Article 112 of the Constitution and in Item 10 of Article 67 thereof; the said Item 10 provides, *inter alia*, that the Seimas appoints justices and the President of the Supreme Court. Thus, the Seimas participates in appointing and releasing not all judges, but only the judges and presidents of the two highest-level courts of general jurisdiction. It also needs to be noted that the Seimas implements these powers together with the President of the Republic.

In order to appoint or release a justice or the President of the Supreme Court, the President of the Republic must propose that the Seimas appoint or release such a person, while the decision on the

appointment of the said person as a justice or the President of the Supreme Court or his/her release from duties is adopted by the Seimas. The Seimas, after it receives the proposal from the President of the Republic, may appoint a certain person as a justice or the President of the Supreme Court, and (*inter alia*, if certain circumstances come to light that are important for such appointment or release) it can also decide not to appoint this person as a justice or the President of the Supreme Court, or it can decide not to release a certain justice or the President of the Supreme Court from duties if, under the Constitution, the release of the justice in question is not mandatory.

[...]

On receiving a proposal from the President of the Republic that a justice or the President of the Supreme Court be released from duties, the Seimas must ascertain whether the said fact of an objective character really exists, i.e. whether the term of powers of a justice or the President of the Supreme Court, as established by law, has expired, and, provided it is recognised that the term of powers has expired, the Seimas must adopt an individual act of the application of law regarding the release of the said justice or the President of the Supreme Court from duties. Thus, in the case where it is established that there is the objective fact that the term of powers of the said justice or the President of the Supreme Court has expired, the release of such a person from duties is mandatory. The same is *mutatis mutandis* applied to the chairpersons of the divisions of the Supreme Court.

5.2.6. Other powers

The powers of the Seimas to establish state awards (Item 18 of Article 67 of the Constitution)

(for more on state awards, see 4. The state and its institutions, 4.5. State awards)

The Constitutional Court's ruling of 7 September 2010

The grounds of the constitutional institution of state awards are consolidated, *inter alia*, in Item 18 of Article 67 ... of the Constitution.

Item 18 of Article 67 of the Constitution provides that the Seimas establishes the state awards of the Republic of Lithuania.

When interpreting the power of the Seimas to establish state awards, which is consolidated in Item 18 of Article 67 of the Constitution, in conjunction with the power of the Seimas to pass laws, which is consolidated in Item 2 of Article 67 of the Constitution, it should be held that, under the Constitution, the Seimas may establish state awards by means of passing a law, i.e. by establishing in such a law, *inter alia*, the system and types of state awards, the insignia of awards, and the grounds for conferring them.

[...]

The content of the constitutional institution of state awards was revealed, to a certain extent, in the Constitutional Court's ruling of 12 May 2006. *Inter alia*, the following was held in the said ruling of the Constitutional Court:

[...]

– when establishing state awards (*inter alia*, establishing the system thereof), the Seimas has broad discretion; however, it must follow the constitutional concept of state awards; the said concept implies that state awards are granted specifically in recognition of merit and that the said merit should be merit to Lithuania (to the State of Lithuania, its society, or certain spheres of the life of this country). The grounds on the basis of which persons may be awarded must be clear; such grounds must be established by means of a law. ...

[...]

... the Constitution, *inter alia*, gives rise to the duty of the legislature to establish such grounds for conferring state awards, according to which, *inter alia*, it would be clear which persons may not be conferred state awards at all.

... in the course of establishing the grounds for conferring state awards it is not permitted to establish any final list of persons entitled to receive awards or any final list of merit entitling persons to receive awards.

The powers of the Seimas related to the use of the armed forces (Item 20 of Article 67 and Article 142 of the Constitution) (for more on national defence, see 13. Foreign policy and national defence, 13.2. National defence)

The Constitutional Court's ruling of 15 March 2011

Item 20 of Article 67 of the Constitution, wherein the list of the constitutional powers of the Seimas is consolidated, provides that “The Seimas ... shall impose ... martial law, declare states of emergency, announce mobilisation, and adopt a decision to use the armed forces”.

The powers of the Seimas established in Item 20 of Article 67 of the Constitution, which are related to the use of the armed forces, are particularised in Paragraph 1 of Article 142 of the Constitution, wherein it is prescribed that “The Seimas shall impose martial law, announce mobilisation or demobilisation, or adopt the decision to use the armed forces when the need arises to defend the Homeland or to fulfil the international obligations of the State of Lithuania”.

[...]

... under the legal regulation established in Paragraph 2 of Article 142 of the Constitution, in the event of an armed attack that threatens the sovereignty of the state or its territorial integrity, a decision immediately adopted by the President of the Republic on the defence against the armed aggression, on the imposition of martial law throughout the state or in its separate part, on the announcement of mobilisation, acquires legal force from the moment of its adoption; however, the President of the Republic must submit this decision for approval at the next sitting of the Seimas (in the period between sessions of the Seimas, an extraordinary session of the Seimas must be convened immediately for this purpose), whereas the Seimas has the right to approve or overrule the decision of the President of the Republic.

[...]

... under the Constitution, *inter alia*, Article 140 thereof, in the course of deliberating and deciding national defence issues, various state institutions and officials take part: *inter alia*, the State Defence Council, which considers and coordinates the main issues of state defence (and which consists of the President of the Republic, the Prime Minister, the Speaker of the Seimas, the Minister of National Defence, and the Commander of the Armed Forces) and the Government, the Minister of National Defence, and the Commander of the Armed Forces, who are responsible before the Seimas for managing and commanding the armed forces of the state; however, decisions on the main issues of national defence are taken by two state institutions: the Seimas and the President of the Republic. The Seimas is empowered to adopt final decisions on the imposition of martial law, on the announcement of mobilisation and demobilisation, on the adoption of the decision to use the armed forces when the need arises to defend the Homeland or to fulfil the international obligations of the State of Lithuania, whereas the President of the Republic, in the event of an armed attack threatening the sovereignty of the state or its territorial integrity, has the powers to immediately adopt such decisions (concerning defence against the armed aggression, the imposition of martial law throughout the state or in its separate part, and the announcement of mobilisation) that are submitted for approval at the next sitting of the Seimas.

It should be noted that the Seimas, while implementing its constitutional power, which is consolidated in Paragraph 2 of Article 142 of the Constitution, to approve or overrule a decision of the President of the Republic concerning defence against armed aggression, the imposition of martial law, as well as the announcement of mobilisation in the event of an armed attack threatening the sovereignty of the state or its territorial integrity, is bound by the values consolidated in the Constitution and constitutionally important objectives, *inter alia*, by the independence of the state and the fulfilment of international obligations.

[...]

... it needs to be noted that the provisions of the Constitution, whereby the general constitutional foundations of national defence and international cooperation (foreign policy) are consolidated, are related, *inter alia*, to the fact that, under Paragraph 1 of Article 138 of the Constitution, the Seimas ratifies the international treaties of the Republic of Lithuania on political cooperation with foreign states, mutual assistance treaties, as well as treaties of a defensive nature related to the defence of the state (Item 2), on

the renunciation of the use of force or threatening by force; as well as peace treaties (Item 3), on the presence and status of the armed forces of the Republic of Lithuania on the territories of foreign states (Item 4), and on the participation of the Republic of Lithuania in universal international organisations and regional international organisations (Item 5). The power of the Seimas, which is consolidated in Paragraph 1 of Article 142 of the Constitution, to adopt the decision to use the armed forces when the need arises to defend the Homeland or to fulfil the international obligations of the State of Lithuania also includes such a decision to use the armed forces when it is necessary to fulfil the international obligations of the Republic of Lithuania under international treaties of the Republic of Lithuania.

The powers of the Seimas to adopt a final decision on the results of an election to the Seimas (Paragraph 3 of Article 107 of the Constitution)

The Constitutional Court's ruling of 27 May 2014

Paragraph 3 of Article 107 of the Constitution stipulates that, on the basis of the conclusions of the Constitutional Court, the Seimas takes a final decision on the issues specified in Paragraph 3 of Article 105 of the Constitution. Under Item 1 of Paragraph 3 of Article 105 of the Constitution, the Constitutional Court presents a conclusion on whether there were the violations of the election law during the elections of the members of the Seimas. As held by the Constitutional Court in its decision of 29 November 2012, the Seimas, after receiving the conclusion of the Constitutional Court that the election law was violated during the election of the members of the Seimas, is obliged to adopt a final decision.

The powers of the Seimas, established in Paragraph 3 of Article 107 of the Constitution, to take a final decision on the results of an election to the Seimas should be interpreted in conjunction with, *inter alia*, the provisions of Item 13 of Article 67 and Paragraph 5 of Article 106 of the Constitution.

Under Item 13 of Article 67 of the Constitution, the Seimas forms the Central Electoral Commission and alters its composition. The Constitutional Court has held that, according to the aforesaid provision, in Lithuania, the universal institution for the organisation of elections – the Central Electoral Commission – must be formed (decision of 11 July 1994 and the conclusion of 26 October 2012). It should be noted that the constitutional mission of the Central Electoral Commission to organise elections also implies the powers of this commission to determine and announce the results of elections to the Seimas.

Paragraph 5 of Article 106 of the Constitution provides that the Seimas and the President may request from the Constitutional Court conclusions on whether the election law was violated, *inter alia*, during the elections of the members of the Seimas (Item 1 of Paragraph 3 of Article 105 of the Constitution). It should be noted that a doubt as to whether the election law was violated, *inter alia*, when the Central Electoral Commission was implementing its powers consolidated in the Constitution and laws in relation to the establishment of the final results of the elections to the Seimas, may constitute the grounds for requesting the aforesaid conclusion from the Constitutional Court; under Item 1 of Paragraph 3 of Article 105 of the Constitution, the Constitutional Court must verify whether such a doubt is justified.

It should be emphasised that, once the Constitutional Court presents the conclusion that the election law was not violated during the election of the members of the Seimas, there are no grounds to doubt the results established by the Central Electoral Commission for the election to the Seimas and no grounds for the Seimas to take a final decision provided for in Paragraph 3 of Article 107 of the Constitution. Thus, under Paragraph 3 of Article 107 of the Constitution, the Seimas has the powers to take a final decision on the results of an election to the Seimas only in cases where, subsequent to an inquiry of the Seimas or the President, the Constitutional Court gives the conclusion that the election law was violated during the election of the members of the Seimas.

It should be noted that, under Paragraph 3 of Article 107 of the Constitution, the Seimas takes a final decision on the results of elections to the Seimas only on the basis of the conclusions of the Constitutional Court. It should also be noted that, under Item 1 of Paragraph 3 of Article 105 of the Constitution, it is only the institution of judicial power – the Constitutional Court – that may establish whether the election law was violated during elections to the Seimas; the establishment of violations of the election law is an object of judicial rather than political assessment.

Thus, the provision of Paragraph 3 of Article 107 of the Constitution, under which, based on the conclusions of the Constitutional Court, the Seimas conclusively decides on the issues specified in Paragraph 3 of Article 105 of the Constitution, must not be interpreted in such a manner that the Seimas is allowed to decide anew the same issue regarding which the Constitutional Court has given its conclusion; under the Constitution, the Seimas has no powers to decide on whether the conclusions of the Constitutional Court on violations of the election law are well-founded and lawful. This, *inter alia*, means that the Seimas, which, in its nature and essence, is a political institution, whose decisions reflect the political will of the majority of the members of the Seimas and are based on political arrangements and compromises, is not allowed to decide the issue of law as to whether the election law was violated, *inter alia*, to disregard the conclusion of the Constitutional Court that the election law was violated during the elections to the Seimas.

When implementing its powers, established in Paragraph 3 of Article 107 of the Constitution, to take a final decision on the results of elections to the Seimas, the Seimas is obliged to pay regard to the constitutional principles of a state under the rule of law and responsible governance.

The Constitutional Court has held on more than one occasion that, in a constitutional democracy, representative political institutions may not be formed in such a way that would raise doubts as to their legitimacy and legality, *inter alia*, that would raise doubts as to whether the principles of a democratic state under the rule of law were not violated in the course of the election of persons to representative political institutions; democratic elections are an important form of citizens' participation in the governance of the state, as well as a necessary element of the formation of state political representative institutions; elections may not be regarded as democratic or their results as legitimate and legal if elections are held by undermining the principles of democratic elections established in the Constitution and violating democratic electoral procedures (*inter alia*, the conclusion of 5 November 2004, the ruling of 1 October 2008, and the conclusion of 10 November 2012).

The principle of responsible governance, which is consolidated in the Constitution, implies that all state institutions and officials are obliged to follow the Constitution and law while performing their functions and to properly implement the powers granted to them by the Constitution and laws by acting in the interests of the Nation and the State of Lithuania (conclusions of 26 October 2012 and 10 November 2012).

When the Seimas is making a final decision on the final election results, an essential significance derives from the fact that certain gross violations of the principles of democratic, free, and fair elections were committed during the election, and that those violations might have distorted the genuine will of the voters. It should be noted that violations of the said electoral principles can be committed not necessarily by candidates for the members of the Seimas themselves – these violations can be committed also by other persons seeking the election of certain candidates to the Seimas.

In its conclusion of 10 November 2012, the Constitutional Court, in interpreting the requirements stemming from the constitutional principles of a state under the rule of law, responsible governance, and those of democratic, free, and fair elections to the Seimas, *inter alia*, emphasised that candidates whose election was sought by committing gross violations of the principles of democratic, free, and fair elections may not receive a mandate of a member of the Seimas; otherwise, the confidence of the Nation in its representation and the state itself would be undermined.

Thus, while implementing its powers, provided for in Paragraph 3 of Article 107 of the Constitution, to take a final decision on the results of elections to the Seimas and having regard to the constitutional principles of a state under the rule of law and responsible governance, the Seimas, *inter alia*, is not allowed to create any preconditions for awarding a mandate of a member of the Seimas for candidates whose election was sought by committing certain gross violations of the principles of democratic, free, and fair elections.

Under Paragraph 3 of Article 107 of the Constitution, on the basis of the Constitutional Court's conclusion that the election law was violated during the election of the members of the Seimas, the Seimas takes a final decision on the results of the election to the Seimas. It should be noted that the Seimas has the

powers to conclusively decide on the results of elections to the Seimas, insofar as these results are related to the violations of the election law established in the respective conclusion of the Constitutional Court.

It should be mentioned that the Constitutional Court has held on more than one occasion that legal certainty, legal security, and the protection of legitimate expectations are inseparable elements of the principle of a state under the rule of law. In the context of the constitutional justice case at issue, it should be emphasised that the constitutional principles of legal certainty, legal security, and the protection of legitimate expectations imply, *inter alia*, the requirement that the stability of the system of state power, *inter alia*, the stability of the Seimas, as a representative political institution, must be ensured. In view of this fact, it should be noted that the final results of elections to the Seimas that are established by the Seimas under Paragraph 3 of Article 107 of the Constitution may not be altered unless there is a constitutional ground for doing so.

For instance, such a constitutional ground is implied by Item 6 of Article 63 of the Constitution, under which the powers of a member of the Seimas cease when the election is declared invalid or the law on election is grossly violated.

In its conclusion of 10 November 2012, the Constitutional Court pointed out that:

- under the Constitution, the gross violations of the principles of democratic, free, and fair elections, *inter alia*, the honesty and transparency of the election process, committed during elections to the Seimas may also be established later, after the elected members of the Seimas have acquired their powers, i.e. after the elected Seimas convenes for its first sitting;

- Item 6 of Article 63 of the Constitution implies the powers of the Seimas to revoke the powers of a member of the Seimas if gross violations of the principles of democratic, free, and fair elections, which give rise to reasonable doubts regarding the lawfulness of the election of that member of the Seimas, are established after that member of the Seimas has acquired his/her powers; under Item 6 of Article 63 of the Constitution, the powers of a member of the Seimas may be revoked both when the election is declared and when it is not declared invalid (for example, it is possible to establish the election results reflecting the genuine will of the voters);

- under Item 1 of Paragraph 3 of Article 105, Paragraph 5 of Article 106, and Paragraph 3 of Article 107 of the Constitution, the Seimas may adopt a decision on revoking the powers of a member of the Seimas under Item 6 of Article 63 of the Constitution only on the grounds of the Constitutional Court's conclusion that the election law was violated during the election to the Seimas, while the Constitutional Court may present the said conclusion only following an inquiry by the Seimas or the President.

It has been mentioned that, if gross violations of the principles of democratic, free, and fair elections were committed with the aim of electing certain candidates, these candidates may not be awarded a mandate of a member of the Seimas, since, otherwise, the confidence of the Nation in its representation and the state itself could be undermined; thus, the Seimas may not create any preconditions for awarding such candidates a mandate of a member of the Seimas.

In view of this fact, it should be noted that, in the cases where, after the establishment of the final results of an election to the Seimas, the gross violations of the principles of democratic, free, and fair elections are discovered revealing that those violations were committed with the aim of electing certain candidates who have not acquired the powers of a member of the Seimas and appear on the lists of candidates as potential candidates to take up the available vacant seats of the members of the Seimas once such vacancies occur, as well as where the Constitutional Court, having received an inquiry of the Seimas or the President, gives the conclusion that the election law was violated during the election to the Seimas, the Seimas, under the Constitution (Item 6 of Article 63 thereof, interpreted in conjunction with Item 1 of Paragraph 3 of Article 105, Paragraph 5 of Article 106, and Paragraph 3 of Article 107 of the Constitution), on the grounds of the said conclusion of the Constitutional Court, is allowed to alter the final results of the election to the Seimas in the multi-member electoral constituency, *inter alia*, by removing from the list of candidates those candidates whose election was sought by committing the gross violations of the aforementioned electoral principles.

In summary, it should be noted that, under Paragraph 3 of Article 107 of the Constitution, the final results established by the Seimas for an election to the Seimas may be altered upon the emergence of a constitutional ground only in the same manner in which they have been established, i.e. only on the basis of another conclusion of the Constitutional Court.

5.2.7. Impeachment proceedings

See 4. The state and its institutions, 4.4. The responsibility of the authorities to society. The constitutional responsibility of the highest state officials.

5.3. THE CONSTITUTIONAL STATUS OF A MEMBER OF THE SEIMAS

The free mandate of a member of the Seimas (Paragraph 4 of Article 59 of the Constitution); the equality of the members of the parliament

The Constitutional Court's ruling of 26 November 1993

Paragraph 4 of Article 59 of the Constitution provides that, while in office, the members of the Seimas follow the Constitution of the Republic of Lithuania, the interests of the state, as well as their own consciences, and may not be restricted by any mandates. Thus, the Constitution consolidates the free mandate of a member of the Seimas and does not recognise any imperative mandate. The essence of the free mandate lies in the freedom of a representative of the Nation to implement the rights and duties vested in him/her without restricting this freedom by the mandates of the electorate or by the political requirements of the parties or organisations that nominated him/her, and without recognising the right to recall a member of the Seimas.

Each member of the parliament represents the entire Nation; all the members of the parliament are the representation of the Nation. When differentiating the rights of the members of the Seimas in such a way that unequal possibilities for their participation in the activities of the Seimas are created, the essential principle of a representative institution – the equality of the members of the parliament – is violated; therefore, it becomes impossible to represent the entire Nation at the Seimas and to express the interests of the Nation.

The principles of the equality of the members of the parliament and a free mandate must also be followed in forming the internal structures of the parliament. ...

In determining the internal structure of the parliament, the universal principles of its formation must be chosen where such principles would ensure the equal and real opportunities for all the members of the parliament to participate in the formed structural units. Otherwise, not all the members of the parliament would have the opportunity of exercising the additional rights established for the said structural units, which would mean the violation of the principle of the equality of all the members of the parliament. ... political groups in the parliament are formed only by the members of the parliament in accordance with the procedure for their formation that is prescribed by the parliament (most frequently, they are formed on the basis of views and political goals), but not by political parties, political organisations, or their coalitions. Though political groups are in close relation with political parties, this does not mean that a political group is a political party in the Seimas or that each party that has its representatives in the Seimas is a political group at the same time. This conclusion is derived from the principle of a free mandate, which is consolidated in the Constitution.

The rights and duties of the members of the Seimas may not be linked with election laws. Firstly, these are different matters governed by a legal regulation (in the first case, elections and, in the second one, the activities of the parliament). Secondly, the matter of the regulation calls forth different criteria on the basis of which the rights and duties of the participants of legal relationships are determined.

... A decision of the parliament whereby the rights of the members of the parliament to participate in the parliamentary process are differentiated violates the rights of a member of the parliament as a representative of the Nation.

[...]

The equality of the members of the Seimas in forming political groups on the basis of views and political goals is an important element of the implementation of the principle of a free mandate. Since a political group (i.e. the members of the parliament who are registered with it) has more possibilities of participating in the activities of the parliament than a member of the Seimas who does not belong to any political group, it must be ensured that all the members of the Seimas have the possibility of freely choosing and forming political groups. Seeking to ensure the working capacity and effectiveness of the Seimas, it is important to establish the minimum number of the members of a political group.

It would be possible to guarantee the rights and possibilities of those members of the Seimas who do not register themselves as political groups, where the said rights and possibilities are equal with those of other members of the Seimas and allow the implementation of the rights of a representative of the Nation, by recognising that they are members of a mixed political group and that such a political group has equal rights with other political groups.

The remuneration of a member of the Seimas (Articles 60 and 99 of the Constitution)

The Constitutional Court's ruling of 9 November 1999

The members of the Seimas are representatives of the Nation; the Nation executes its supreme sovereign power through the members of the Seimas (Paragraph 1 of Article 55 and Article 4 of the Constitution). The members of the Seimas are capable of performing the functions of the representatives of the Nation properly only when they have the rights and duties directly consolidated and guaranteed in the Constitution and are free and independent. One of the main guarantees of the free and independent activity of a member of the Seimas is the fact that, under Paragraph 3 of Article 60 of the Constitution, the work of the members of the Seimas, as well as all expenses relating to their parliamentary activities, is remunerated from the state budget. The same article also provides that a member of the Seimas may not receive any other remuneration, with the exception of remuneration for creative activities. These constitutional provisions imply that the remuneration of a member of the Seimas must be of a sufficient amount and it must be paid regularly; the same constitutional provisions imply that, during the term of office of the Seimas, it is not allowed to establish, by means of a law, the remuneration of a member of the Seimas that is smaller from the one existing at the beginning of the term of office of the Seimas. Such a constitutional regulation of the remuneration of a member of the Seimas is established in order that the members of the Seimas would properly perform their obligations as representatives of the Nation.

[...]

It should be noted that the grounds for establishing the remuneration of member of the Seimas are laid down not only in Paragraph 3, but also in other paragraphs of Article 60 of the Constitution.

[...]

Article 60 of the Constitution prescribes:

“The duties of the Members of the Seimas, with the exception of their duties at the Seimas, shall be incompatible with any other duties at state institutions or organisations, or with work in business, commercial, or other private establishments or enterprises. During their term of office, the Members of the Seimas shall be exempt from the duty to perform national defence service.

A Member of the Seimas may be appointed only either as the Prime Minister or a Minister.

The work of the Members of the Seimas, as well as all expenses relating to their parliamentary activities, shall be remunerated from the State Budget. A Member of the Seimas may not receive any other remuneration, with the exception of remuneration for creative activities.

The duties, rights, and guarantees of the activities of a Member of the Seimas shall be established by law.”

Thus, Paragraph 1 of Article 60 prescribes that the members of the Seimas are prohibited from holding any other office in state institutions or organisations, as well as from working in business, commercial, or other private establishments or enterprises. Paragraph 2 of the said article provides for an exception to the limitations established in Paragraph 1 thereof: a member of the Seimas may be appointed only either as the

Prime Minister or a minister. The norm set out in Paragraph 2 of Article 60 of the Constitution is a special norm with respect to the general norm formulated in Paragraph 1 of this article.

The constitutional right of a member of the Seimas to hold the office of the Prime Minister or that of a minister implies the right to receive remuneration for holding such office. This is also confirmed by Article 99 of the Constitution, wherein it is established that the Prime Minister and ministers receive remuneration established for their respective governmental duties. Paragraph 4 of Article 60 of the Constitution provides that the guarantees of the activities of a member of the Seimas and, consequently, also his/her remuneration, are established by law.

If the relation among Paragraphs 1, 2 and the other paragraphs of Article 60 of the Constitution, as well as the relation of the same article with Article 99 of the Constitution, is assessed in a systemic manner, the conclusion should be drawn that it is possible to establish different remuneration for the work performed in the capacity of a member of the Seimas for such a member of the Seimas who is appointed either as the Prime Minister or a minister.

Under the Constitution, the Seimas has the discretion to establish, by means of a law, such remuneration for the work performed in the capacity of a member of the Seimas for such a member of the Seimas who is appointed either as the Prime Minister or a minister, where the said remuneration is different from that paid to other members of the Seimas; however, when exercising such discretion, the Seimas is bound by the constitutional principles of a state under the rule of law. Consequently, in this case, the remuneration of a member of the Seimas must also be of a sufficient amount in order that such a member of the Seimas performs his/her duty as a representative of the Nation.

[...]

It has already been noted in this ruling that one of the main guarantees of the activity of a member of the Seimas is the fact that, under Paragraph 3 of Article 60 of the Constitution, the work of the members of the Seimas, as well as all expenses relating to their parliamentary activities, is remunerated from the state budget. This is one of the guarantees of the independence and the equality of the rights of the members of the Seimas. The Constitution does not contain any legal norms under which the same remuneration must be established for all the members of the Seimas regardless of the fact that a member of the Seimas may hold certain office in the Seimas or in the Government. Under Paragraphs 1, 2, and 4 of Article 60 of the Constitution, the Seimas has the discretion to establish, by means of a law, such remuneration for the work performed in the capacity of a member of the Seimas for such members of the Seimas who are appointed either as the Prime Minister or a minister, where the said remuneration is different from that paid to the other members of the Seimas. Different remuneration may also be established for those members of the Seimas who hold in the Seimas office that is provided for in the Statute of the Seimas.

The constitutional status of a member of the Seimas (Paragraph 1 of Article 55 and Paragraph 4 of Article 59 of the Constitution)

The Constitutional Court's ruling of 30 May 2003

Under Paragraph 1 of Article 55 of the Constitution, the Seimas consists of representatives of the Nation – the members of the Seimas. The constitutional status of a member of the Seimas, a representative of the Nation, means that a member of the Seimas is not a representative of any territorial community, a community or group of the citizens, a political party or some other organisation: he/she represents the whole Nation. The status of a member of the Seimas, a representative of the Nation, arises out of the provisions of the Constitution, whereby the State of Lithuania is an independent democratic republic (Article 1); the Nation executes its supreme sovereign power either directly or through its democratically elected representatives (Article 4), etc. A free mandate is an essential element of the status of a member of the Seimas as a representative of the Nation.

In its rulings of 26 November 1993 and 25 January 2001, when interpreting Paragraph 4 of Article 59 of the Constitution, according to which, while in office, the members of the Seimas follow the Constitution of the Republic of Lithuania, the interests of the state, as well as their own consciences, and may not be

restricted by any mandates, the Constitutional Court stated that the Constitution consolidates the free mandate of a member of the Seimas and does not recognise an imperative mandate.

The essence of the free mandate lies in the freedom of a representative of the Nation to implement the rights and duties vested in him/her without restricting this freedom by the mandates of the electorate or by the political requirements of the parties or organisations that nominated him/her. A free mandate also means that voters have no right to recall a member of the Seimas. An early recall of a member of the Seimas would constitute one of the elements of an imperative mandate. The Constitution prohibits an imperative mandate. Democratic states do not recognise the imperative mandate of a member of the parliament; thus, they do not recognise the possibility of an early recall of a member of the parliament from his/her office, either.

It should also be noted that the Constitution consolidates the immunity of a member of the Seimas in order that members of the Seimas, as representatives of the Nation, would perform their duties without any hindrance. Article 62 of the Constitution provides that the person of a member of the Seimas is inviolable; a member of the Seimas may not be held criminally liable or be detained, or have his/her liberty restricted otherwise, without the consent of the Seimas (Paragraphs 1 and 2 of Article 62).

Under the Constitution, the duties of the members of the Seimas, with the exception of their duties at the Seimas, are incompatible with any other duties at state institutions or organisations, or with work in business, commercial, or other private establishments or enterprises (Paragraph 1 of Article 60 of the Constitution). A member of the Seimas may be appointed only either as the Prime Minister or a minister (Paragraph 2 of Article 60 of the Constitution). A member of the Seimas may not receive any other remuneration (save that of the member of the Seimas), with the exception of remuneration for creative activities (Paragraph 3 of Article 60 of the Constitution).

Thus, the Constitution consolidates the principle of the prohibition on a dual mandate: a member of the Seimas, as a representative of the Nation, may not simultaneously be a representative of a territorial community – a member of a municipal council.

The constitutional status of a member of the Seimas

The Constitutional Court's ruling of 1 July 2004

The Seimas consists of the members of the Seimas – representatives of the Nation. Each member of the Seimas represents the entire Nation. When fulfilling his/her constitutional obligation to represent the Nation, a member of the Seimas participates in performing all constitutional functions of the Seimas and exercises all powers of a member of the Seimas.

The continuity of the activity of the Seimas also implies the continuity of the activity of a member of the Seimas as a representative of the Nation. Under the Constitution, legal acts should establish such a structure and work procedure of the Seimas and such a legal status of a member of the Seimas that would provide for an opportunity for each member of the Seimas to fulfil his/her constitutional obligation to be constantly involved in the work of the Seimas, the representation of the Nation, and to exercise on a continuous basis his/her constitutional powers, as a representative of the Nation.

It needs to be emphasised that the Constitution treats a member of the Seimas as a professional politician, i.e. as such a representative of the Nation whose work at the Seimas is his/her professional activity.

[...]

The Constitution consolidates the free mandate of a member of the Seimas and the constitutional obligation of a member of the Seimas to represent the Nation. The powers of a member of the Seimas must be interpreted by taking into account the overall constitutional legal regulation. On the one hand, the constitutional legal status of a member of the Seimas and the separate elements of such status (rights and duties of a member of the Seimas, the guarantees of both his/her work at the Seimas and his/her other parliamentary activities, limitations applied in respect to a member of the Seimas, etc.) should be interpreted not in isolation from one another, but as a whole and as a system, since each element of the constitutional legal status of a member of the Seimas may be constitutionally correctly understood only if linked with other elements of the constitutional legal status of a member of the Seimas and assessed as part

of a single whole – the constitutional legal status of a member of the Seimas. On the other hand, the constitutional legal status of a member of the Seimas and its separate elements should also be interpreted in the context of other constitutional institutions, *inter alia*, in the context of the individual rights and freedoms, as consolidated in the Constitution – the right of ownership, the inviolability of property, and protection of the rights of ownership (Article 23 of the Constitution), the right to freely choose an occupation or business (Paragraph 1 of Article 48 of the Constitution), freedom of economic activity and initiative (Paragraph 1 of Article 46 of the Constitution), the right of citizens to freely form societies, political parties, and associations (Article 35 of the Constitution), the right of employees to establish trade unions aimed at protecting their professional, economic, and social rights and interests (Article 50 of the Constitution), etc. ... the provisions of the Constitution that consolidate the constitutional legal status of a member of the Seimas may not be interpreted in such a way that the aforementioned and other constitutional rights and freedoms of a person would be violated. Still, equally important is the fact that the provisions of the Constitution that consolidate the said and other individual rights and freedoms may not be interpreted in such a way that would deny or distort the content of the constitutional legal status of a member of the Seimas as a representative of the Nation, i.e. the said provisions may not be interpreted in order to create the preconditions for a member of the Seimas to have a conflict of public and private interests, or in order to create the preconditions for a member of the Seimas not to perform or to perform improperly his/her constitutional duty to represent the entire Nation and to act in the interests of the Nation and the State of Lithuania, or in order to create the preconditions for a member of the Seimas to use the free mandate of a member of the Seimas not in the interests of the Nation and the State of Lithuania, but for his/her private benefit, or for the benefit of his/her close relatives or other persons, or in their personal or group interests, or in the interests of the political parties or political organisations, the public or other organisations, other persons, or the territorial communities that nominated or supported the said person as a candidate for the office of a member of the Seimas, or in the interests of the voters of the constituency in which the said member of the Seimas was elected. Therefore, neither the provisions of the Constitution that consolidate the constitutional legal status of a member of the Seimas nor its provisions in which the rights and freedoms of persons are consolidated may be interpreted only literally, by applying only the linguistic (verbal) method and ignoring other constitutional provisions and their links with, *inter alia*, the provisions of the Constitution that consolidate the constitutional status of a member of the Seimas and/or the rights and freedoms of persons, while ignoring the interrelation in the content of these constitutional provisions, a balance among the constitutional values, and the essence of the constitutional legal regulation as a single whole.

The oath of a member of the Seimas and the acquisition of the rights of a representative of the Nation (Article 59 of the Constitution)

The Constitutional Court's ruling of 1 July 2004

Paragraph 2 of Article 55 of the Constitution provides that the Seimas is deemed elected when not less than 3/5 of the members of the Seimas are elected. According to the Constitution, the Seimas consists of 141 members. Thus, the Seimas is deemed elected when at least 85 members of the Seimas are elected. Article 65 of the Constitution prescribes that the President of the Republic convenes the first sitting of the newly elected Seimas, which must be held within 15 days of the election of the Seimas; if the President of the Republic fails to convene the Seimas, the members of the Seimas assemble by themselves on the day following the expiry of the 15-day period. Paragraph 2 of Article 66 of the Constitution provides that the first sitting of the Seimas after its election is opened by the eldest member of the Seimas; it should be held that this is the only provision of the Constitution that *expressis verbis* consolidates the power of one – the eldest – elected member of the Seimas exercised at the Seimas; such a member of the Seimas has this power prior to acquiring all powers of a representative of the Nation.

It needs to be emphasised that, according to the Constitution, as such, the election of a member of the Seimas does not mean that an elected member of the Seimas acquires all rights of a representative of the Nation. Under the Constitution, the acquisition of all rights of a representative of the Nation is linked with

the oath of a member of the Seimas; such an oath must be taken by an elected member of the Seimas at a sitting of the Seimas. Paragraph 2 of Article 59 of the Constitution prescribes that a member of the Seimas acquires all rights of a representative of the Nation only after taking an oath at the Seimas to be faithful to the Republic of Lithuania. This constitutional provision also means that a member of the Seimas does not have all rights of a representative of the Nation until he/she takes an oath – such an elected member of the Seimas is not a representative of the Nation yet; he/she does not have the powers of a member of the Seimas and may not exercise them yet.

If interpreted in the context of the principle of the continuity of the activity of the Seimas, as consolidated in the Constitution, the constitutional provisions according to which the term of office of the members of the Seimas is counted from the day when the newly elected Seimas convenes for the first sitting and those whereby the term of office of the previously elected members of the Seimas expires from the beginning of the sitting imply that the newly elected Seimas as the fully fledged representation of the Nation must begin functioning namely from the beginning of this sitting. Since a member of the Seimas, under the Constitution, acquires all rights of a representative of the Nation only after taking an oath in the Seimas to be faithful to the Republic of Lithuania, elected members of the Seimas, under the Constitution, must take an oath at the first sitting of a newly elected Seimas. According to the Constitution, the legislature must establish such a procedure of taking an oath of a member of the Seimas that all the members of the Seimas take an oath namely at the first sitting of a newly elected Seimas. An exception could be made for those elected members of the Seimas who are not able to arrive at the first sitting of a newly elected Seimas only for duly justified exceptional reasons (for example, for the reason of illness); under the Constitution, such an elected member of the Seimas must take an oath at the next sitting of the Seimas after the said duly justified exceptional reason because of which an elected member of the Seimas was not able to take the oath at the first sitting of a newly elected sitting of the Seimas no longer exists.

Paragraph 3 of Article 59 of the Constitution provides that a member of the Seimas who either does not take the oath according to the procedure established by law or takes a conditional oath loses the mandate of a member of the Seimas; the Seimas adopts a corresponding resolution thereon. It needs to be emphasised that the Constitution does not tolerate such a situation where elected members of the Seimas fail to meet at the first sitting of a newly elected Seimas or where they meet at the sitting but fail to take an oath. Such conduct of an elected member of the Seimas where he/she fails to arrive at the first sitting of a newly elected Seimas in the absence of a duly justified exceptional reason or arrives at the sitting but fails to take an oath should be evaluated as the refusal of such an elected member of the Seimas to take an oath and should result in the legal consequences provided for in Paragraph 3 of Article 59 of the Constitution – the loss of the mandate of a member of the Seimas. The conduct where the elected member of the Seimas fails to take an oath at the next sitting of the Seimas after the said duly justified exceptional reason because of which an elected member of the Seimas was not able to take the oath at the first sitting of a newly elected sitting of the Seimas no longer exists should be evaluated in the same way and it should give rise to the same legal consequences. The Seimas must adopt a corresponding resolution thereon.

The oath of a member of the Seimas is not a mere formal or symbolic act (ruling of 25 May 2004). Such an oath is not just the solemn utterance of the words of the oath and the signing of the act of the oath. In its ruling of 25 May 2004, the Constitutional Court held that the act of the oath of a member of the Seimas is constitutionally legally significant: when taking an oath, an elected member of the Seimas publicly and solemnly assumes the obligation to act in the way that the oath taken obliges and to breach the oath under no circumstances; from the moment of taking an oath, the constitutional duty of the member of the Seimas arises to act only in the way that the oath taken obliges and to breach the oath under no circumstances.

The text of the oath of a member of the Seimas is established in Article 5 of the Republic of Lithuania's Law on the Procedure for the Entry into Force of the Constitution of the Republic of Lithuania, which is a constituent part of the Constitution. A member of the Seimas assumes the obligation to be faithful to the Republic of Lithuania; to respect and uphold its Constitution and laws and to protect the integrity of its lands; and to strengthen, to the best of his/her ability, the independence of Lithuania, and to conscientiously

serve the Homeland, democracy, and the welfare of the people of Lithuania. Paragraph 4 of Article 59 of the Constitution provides that, while in office, the members of the Seimas follow the Constitution of the Republic of Lithuania, the interests of the state, as well as their own consciences, and may not be restricted by any mandates. Thus, the oath of a member of the Seimas obligates him/her in all activities to follow the Constitution, the interests of the state, as well as his/her own conscience, and not to be restricted by any mandates. The oath of a member of the Seimas gives rise to the duty a member of the Seimas to respect and execute the Constitution and laws, as well as to conscientiously perform the duties of a representative of the Nation in the manner as the Constitution obliges him/her to act. In its ruling of 25 May 2004, the Constitutional Court held that the Constitution implies such a notion of the discretion of a member of the Seimas and the conscience of a member of the Seimas whereby no gap must exist between the discretion of a member of the Seimas and the conscience of a member of the Seimas, on the one hand, and the requirements of the Constitution, as well as the values protected and defended under the Constitution, on the other hand; according to the Constitution, the discretion of a member of the Seimas and his/her conscience must be oriented towards the Constitution and the interests of the Nation and the State of Lithuania.

The free mandate of a member of the Seimas (Paragraph 4 of Article 59 of the Constitution); the equality of the rights of the members of the Seimas

The Constitutional Court's ruling of 1 July 2004

Paragraph 4 of Article 59 of the Constitution consolidates one of the major elements of the constitutional legal status of a member of the Seimas – the free mandate of a member of the Seimas as a representative of the Nation. The Constitution consolidates the free mandate of a member of the Seimas and prohibits an imperative mandate.

The essence of the free mandate lies in the right of a representative of the Nation to implement the rights and duties established for him/her without restricting this freedom by the mandates of the electorate or by the political requirements of the parties or organisations that nominated him/her. The free mandate of a member of the Seimas also means that voters have no right to recall a member of the Seimas. An early recall of a member of the Seimas would constitute one of the elements of an imperative mandate. Democratic states do not recognise the imperative mandate of a member of the parliament; thus, they do not recognise the possibility of an early recall of a member of the parliament from his/her office, either (rulings of 26 November 1993, 9 November 1999, 25 January 2001, and 30 May 2003).

The free mandate of a member of the Seimas, which is consolidated in the Constitution, reveals the essence of the constitutional legal status of a member of the Seimas as a representative of the Nation and is inseparably linked with the equality of the members of the Seimas. Under the Constitution, each member of the Seimas represents the entire Nation. All the members of the Seimas are equal and they must have the same opportunities to participate in the work of the Seimas. If the rights of the members of the Seimas were differentiated in such a way that unequal possibilities for their participation in the activities of the Seimas are created, the essential principle of this representative institution – the equality of the members of the parliament – would be violated; therefore, it would become impossible for the members of the Seimas to represent the entire Nation at the Seimas and to express the interests of the entire Nation. The principles of the free mandate of a member of the Seimas and the equality of the members of the Seimas must also be followed when establishing the internal structure of the Seimas. The free mandate of a member of the Seimas, which is consolidated in the Constitution, is one of the guarantees for the autonomy of the activities carried out by the members of the Seimas and for their equality (rulings of 26 November 1993, 9 November 1999, and 25 January 2001).

It should also be emphasised that the free mandate of a member of the Seimas, which is consolidated in the Constitution, may not be understood as permission for a member of the Seimas always to act at discretion, to follow his/her conscience, and to ignore the Constitution (ruling of 25 May 2004). ... the Constitution implies such a notion of the discretion of a member of the Seimas and the conscience of a

member of the Seimas whereby no gap must exist between the discretion of a member of the Seimas and the conscience of a member of the Seimas, on the one hand, and the requirements of the Constitution, as well as the values protected and defended under the Constitution, on the other hand. The free mandate of a member of the Seimas is not a privilege of a representative of the Nation but one of the legal measures ensuring that the Nation will be properly represented in its democratically elected representation, the Seimas, and that the representation of the Nation, the Seimas, will act only in the interests of the Nation and the State of Lithuania. For this reason, the free mandate of a member of the Seimas may not be used in the interests other than those of the Nation and the State of Lithuania. The free mandate of a member of the Seimas may not be used for the private benefit of a member of the Seimas, his/her close relatives or other persons, or in their personal or group interests, or in the interests of the political parties or political organisations, the public or other organisations, other persons, or the territorial communities that nominated or supported the said person as a candidate for the office of a member of the Seimas, or in the interests of the voters of the constituency in which the said member of the Seimas was elected, i.e. it may not be used to serve particular interests. Under the Constitution, a member of the Seimas is not a representative of political parties or political organisations, public or other organisations, interest groups, territorial communities, or the voters of the constituency in which he/she was elected, but a member of the Seimas represents the entire Nation.

The constitutional consolidation of the free mandate of a member of the Seimas, as well as the essence of the Seimas as the representation of the Nation, implies the constitutional duty of the Seimas to lay down in legal acts such a legal regulation that would create no preconditions for using the free mandate of a member of the Seimas in the interests other than the interests of the Nation and the State of Lithuania, i.e. for the private benefit of a member of the Seimas, his/her close relatives or other persons, or in their personal or group interests, or in the interests of the political parties or political organisations, the public or other organisations, other persons, or the territorial communities that nominated or supported the said person as a candidate for the office of a member of the Seimas, or in the interests of the voters of the constituency in which the said member of the Seimas was elected. The legislature must establish such a legal regulation that would ensure that a member of the Seimas works only for the Nation and the State of Lithuania, and avoids the conflict between the interests of the Nation and the State of Lithuania on the one hand and, on the other hand, the private interests of a member of the Seimas, his/her close relatives or other persons (personal or group interests), the interests of the political parties or political organisations, the public or other organisations, other persons or the territorial communities that nominated or supported the said person as a candidate for the office of a member of the Seimas, or the interests of the voters of the constituency in which the said member of the Seimas was elected. At the same time, the activity of a member of the Seimas should be legally regulated in such a manner that it would be possible to exercise effective control over whether such a conflict exists and whether a member of the Seimas uses his/her free mandate in the interests other than the interests of the Nation and the State of Lithuania. If a member of the Seimas disregards the aforementioned requirements of the Constitution, he/she must be held liable pursuant to the Constitution and laws.

The rights of a member of the Seimas

The Constitutional Court's ruling of 1 July 2004

The most important rights of a member of the Seimas as a representative of the Nation are *expressis verbis* or implicitly consolidated in the Constitution itself. Some constitutional rights are exercised by a member of the Seimas as a single person. For instance, a member of the Seimas has the right of legislative initiative at the Seimas (Paragraph 1 of Article 68 of the Constitution); a member of the Seimas also has the right to submit an inquiry to the Prime Minister, the ministers, and the heads of other state institutions formed or elected by the Seimas; the said persons must respond orally or in writing during the session of the Seimas according to the procedure established by the Seimas (Paragraph 1 of Article 61 of the Constitution). A member of the Seimas also has the constitutional right to aspire to hold a specific office at the Seimas; this right comprises the right to hold at the Seimas such office that is directly specified

in the Constitution, i.e. the office of the Speaker or that of the Deputy Speaker of the Seimas, as well as other duties at the Seimas where such duties are provided for in the Statute of the Seimas, which, under the Constitution, establishes the structure and procedure of activities of the Seimas and has the force of a law (Article 76 of the Constitution). A member of the Seimas, together with other members of the Seimas, exercises other rights laid down in the Constitution. For instance, a group of not less than 1/4 of all the members of the Seimas has the right to submit a motion to alter or supplement the Constitution of the Republic of Lithuania to the Seimas (Paragraph 1 of Article 147 of the Constitution); a group of not less than 1/5 of the members of the Seimas may interpellate the Prime Minister or a minister (Paragraph 2 of Article 61 of the Constitution), or apply to the Constitutional Court (Paragraph 1 of Article 106 of the Constitution); a group of members of the Seimas may initiate impeachment proceedings against the President of the Republic, the President and justices of the Constitutional Court, the President and justices of the Supreme Court, the President and judges of the Court of Appeal, as well as the members of the Seimas (Article 74 of the Constitution, the ruling of 15 April 2004). The members of the Seimas have the right on equal basis to participate when the Seimas, as the representation of the Nation, exercises its powers of the representation of the Nation established in Article 67 of the Constitution, in other articles of the Constitution, and in laws. The free mandate of a member of the Seimas consolidated in the Constitution constitutes a compulsory condition for carrying out the constitutional duty of a member of the Seimas to represent the entire Nation.

According to Paragraph 4 of Article 60 of the Constitution, the rights of a member of the Seimas are established by law. Thus, the Constitution provides for two levels in the legal regulation of the rights of a member of the Seimas: the rights established in the Constitution itself and the rights established in laws by the legislature. The aforementioned provision of Paragraph 4 of Article 60 of the Constitution implies the duty of the Seimas to lay down the rights of a member of the Seimas in laws in order to ensure the possibility of the members of the Seimas for performing, in a fully fledged manner, their constitutional obligation as the one of the representatives of the Nation. In establishing this, the legislature must pay regard to the norms and principles of the Constitution; for instance, the legislature may not establish any such rights of a member of the Seimas that would unreasonably grant privileges to members of the Seimas, since the requirement of, *inter alia*, Paragraph 2 of Article 29 of the Constitution, whereby no one may be granted any privileges on the grounds of social status, would be ignored.

In this context, it should also be noted that ... under Article 76 of the Constitution, the structure and procedure of activities of the Seimas are established by the Statute of the Seimas. It is obvious that the legal regulation of the structure and procedure of activities of the Seimas is linked with the establishment of the rights of a member of the Seimas; therefore, the aforementioned provisions of Paragraph 4 of Article 60 of the Constitution and Article 76 of the Constitution may not be opposed. For instance, in its ruling of 13 May 2004, the Constitutional Court held that the aforementioned provision of Article 76 of the Constitution may not be interpreted only linguistically. It was also held in the same ruling of the Constitutional Court that, in order that it could properly perform its constitutional functions, the Seimas may also need to form such structural subunits that would have powers with respect to various state and municipal institutions, their officials, and other persons, and that, if it is necessary to establish the powers of authority of a structural subunit of the Seimas with respect to institutions, their officials, or other persons that are not accountable to the Seimas, such powers of the said structural subunit of the Seimas must be established by means of a law. In the same way, where the rights of a member of the Seimas comprise certain powers of a member of the Seimas with respect to institutions, their officials, or other persons that are not accountable to the Seimas, then, under the Constitution, such powers should be established by means of a law. However, insofar as the rights of a member of the Seimas are linked only with his/her activity at the Seimas, i.e. with the structure and procedure of activities of the Seimas itself, such rights may be established in the Statute of the Seimas.

The duties of the members of the Seimas

The Constitutional Court's ruling of 1 July 2004

In order that a member of the Seimas would be able to continuously perform his/her duties, as a representative of the Nation, the Constitution itself establishes not only certain rights, but also the duties of a member of the Seimas. Some duties of a member of the Seimas are formulated in the Constitution *expressis verbis*. Other duties of a member of the Seimas are not *expressis verbis* formulated in the Constitution, but they are consolidated implicitly – they are derived from the constitutional legal status of a member of the Seimas as a representative of the Nation. Still, some other duties of a member of the Seimas are consolidated not in the Constitution, but in lower-ranking legal acts: laws and the Statute of the Seimas.

The Constitution *expressis verbis* consolidates only some duties of a member of the Seimas. For instance, a member of the Seimas must follow the taken oath of a member of the Seimas, which obligates him/her to be faithful to the Republic of Lithuania, to respect and uphold its Constitution and laws and to protect the integrity of its lands, to strengthen, to the best of his/her ability, the independence of Lithuania, and to conscientiously serve the Homeland, democracy, and the welfare of the people of Lithuania (Paragraph 2 of Article 59 of the Constitution, Article 5 of the Republic of Lithuania's Law on the Procedure for the Entry into Force of the Constitution of the Republic of Lithuania). Paragraph 4 of Article 59 of the Constitution provides for the duty of a member of the Seimas, while in office, to follow the Constitution of the Republic of Lithuania, the interests of the state, as well as his/her own conscience, and not to be restricted by any mandates.

Other constitutional duties of a member of the Seimas are formulated in the Constitution as certain limitations applied to a member of the Seimas – the incompatibility of the duties of a member of the Seimas with other duties or another occupation, except the cases established in the Constitution, and the prohibition precluding a member of the Seimas from receiving other remuneration, save the exceptions established in the Constitution (Article 60 of the Constitution); these limitations for the members of the Seimas are established in the Constitution in order to ensure the free mandate of a member of the Seimas as a representative of the Nation, the continuity of his/her work at the Seimas, as well as that of other parliamentary activity in which he/she is engaged.

Those members of the Seimas who hold at the Seimas such office that is directly specified in the Constitution, i.e. that of the Speaker or the Deputy Speaker of the Seimas, in addition to their duties of a member of the Seimas as representatives of the Nation, also have other duties and respective rights *expressis verbis* specified in the Constitution. For instance, the Speaker of the Seimas has the duty (as well as the right) to sign an adopted law on an alteration of the Constitution if the President of the Republic does not sign it during the specified time (Paragraph 2 of Article 149 of the Constitution), to sign laws adopted by the Seimas if they are not signed or referred back by the President of the Republic to the Seimas for reconsideration within the period indicated in the Constitution (Paragraphs 2 and 4 of Article 72 of the Constitution), to sign other acts adopted by the Seimas and the Statute of the Seimas (Paragraph 2 of Article 70 of the Constitution), to temporarily hold the office of the President of the Republic in cases under the Constitution (Paragraph 1 of Article 89 of the Constitution), or to temporarily substitute for the President of the Republic (Paragraph 2 of Article 89 of the Constitution), to be a member of the State Defence Council (Paragraph 1 of Article 140 of the Constitution), to convene extraordinary sessions of the Seimas on the proposal of not less than one-third of all the members of the Seimas (Paragraph 2 of Article 64 of the Constitution), to submit three candidates for justices of the Constitutional Court (Paragraph 1 of Article 103 of the Constitution). The Speaker of the Seimas and the Deputy Speaker of the Seimas also has the duty (as well as the right) to preside over sittings of the Seimas (Paragraph 1 of Article 66 of the Constitution).

It should be noted that certain constitutional duties of a member of the Seimas are not *expressis verbis* formulated in the Constitution; however, they are inseparably linked with the activities of a member of the Seimas at the Seimas and with other parliamentary activity. For example, the constitutional mission of the Seimas as the representation of the Nation, as well as the constitutional legal status of a member of the Seimas as a representative of the Nation, implies the constitutional obligation of a member of the Seimas

to represent the Nation; thus, it also implies the duty of a member of the Seimas to participate in sittings of the Seimas and in the activity of those Seimas structural subunits of which he/she is a member.

According to Paragraph 4 of Article 60 of the Constitution, the duties of a member of the Seimas are established by law. Thus, the Constitution provides for two levels of the legal regulation of the duties of a member of the Seimas: the duties established in the Constitution itself and the duties established in laws by the legislature. The aforementioned provision of Paragraph 4 of Article 60 of the Constitution implies the duty of the Seimas to lay down, in laws, such duties of a member of the Seimas in order to ensure that the members of the Seimas, as the representatives of the Nation, will perform their constitutional obligation in a fully fledged manner. When establishing the aforementioned provisions, the legislature is bound by the Constitution.

... under Article 76 of the Constitution, the structure and procedure of activities of the Seimas are established by the Statute of the Seimas. The legal regulation of the structure and procedure of activities of the Seimas is also related to the establishment of the duties of a member of the Seimas. Under the Constitution, the duties of a member of the Seimas that are not linked with the work of a member of the Seimas at the Seimas, i.e. those not linked with the structure and procedure of activities of the Seimas, must be established by means of a law. However, insofar as the duties of a member of the Seimas are linked only with his/her activity at the Seimas, i.e. with the structure and procedure of activities of the Seimas itself, such duties may be established in the Statute of the Seimas.

The guarantees of the parliamentary activities of a member of the Seimas

The Constitutional Court's ruling of 1 July 2004

One of the elements of the constitutional legal status of a member of the Seimas is the guarantees of both the work of a member of the Seimas at the Seimas and other parliamentary activity. When evaluating the entirety of the guarantees of both the work of a member of the Seimas at the Seimas and other parliamentary activity, as consolidated in the Constitution, it should be held that, in this regard, the constitutional legal status of a member of the Seimas, a representative of the Nation, is different in essence from the constitutional legal status of other citizens and other state officials.

The system of the guarantees of both the work of a member of the Seimas at the Seimas and other parliamentary activity comprises, *inter alia*, the immunities of a member of the Seimas. Article 62 of the Constitution provides that the person of a member of the Seimas is inviolable (Paragraph 1); a member of the Seimas may not be held criminally liable or be detained, or have his/her liberty restricted otherwise, without the consent of the Seimas (Paragraph 2).

Paragraph 3 of Article 60 of the Constitution provides that the members of the Seimas may not be persecuted for their votes or speeches at the Seimas: they may be held liable according to the general procedure only for personal insult or defamation.

The Constitution also provides for a special procedure of revoking the mandate of a member of the Seimas: under Article 74 of the Constitution, the Seimas may, by a 3/5 majority vote of all the members of the Seimas, revoke the mandate of a member of the Seimas who has grossly violated the Constitution, breached the oath, or committed a crime.

Paragraph 1 of Article 60 of the Constitution provides, *inter alia*, that, during their term of office, the members of the Seimas are exempt from the duty to perform national defence service.

According to Paragraph 3 of Article 60 of the Constitution, the work of a member of the Seimas is remunerated from the state budget. In its ruling of 9 November 1999, when interpreting this constitutional provision, the Constitutional Court held that the remuneration of a member of the Seimas must be of a sufficient amount and it must be paid regularly; the same constitutional provisions imply that, during the term of office of the Seimas, it is not allowed to establish, by means of a law, the remuneration of a member of the Seimas that is smaller from the one existing at the beginning of the term of office of the Seimas. Such a constitutional regulation of the remuneration of a member of the Seimas is established in order that the members of the Seimas would properly perform their obligations as representatives of the Nation.

The Constitution also consolidates such a guarantee of parliamentary activities of the members of the Seimas that ensures that expenses relating to their parliamentary activities are remunerated from the state budget (Paragraph 3 of Article 60 of the Constitution).

According to Paragraph 4 of Article 60 of the Constitution, the guarantees of the activities of a member of the Seimas are established by law. Thus, the Constitution provides for two levels of the legal regulation of the system of the guarantees of both the work of a member of the Seimas at the Seimas and other parliamentary activities: the guarantees established in the Constitution itself and the guarantees established in laws by the legislature. It should be noted that the aforementioned provision of Paragraph 4 of Article 60 of the Constitution implies the duty of the Seimas to lay down, in laws, the system of the guarantees of both the work of a member of the Seimas at the Seimas and other parliamentary activities in order to ensure the possibility of the members of the Seimas, as the representatives of the Nation, for performing their constitutional obligation in a fully fledged manner. In establishing this, the legislature must pay regard to the norms and principles of the Constitution; the legislature, *inter alia*, may not establish any such guarantees that would unreasonably grant privileges to members of the Seimas, since the requirement of, *inter alia*, Paragraph 2 of Article 29 of the Constitution, whereby no one may be granted any privileges on the grounds of social status, would be ignored.

... under Article 76 of the Constitution, the structure and procedure of activities of the Seimas are established by the Statute of the Seimas. The legal regulation of the structure and procedure of activities of the Seimas is also linked with the establishment of the guarantees of both the work of a member of the Seimas at the Seimas and other parliamentary activities. If the guarantees of the parliamentary activity of a member of the Seimas are related to the duties, arising therefrom, towards the institutions, their officials, and other persons that are not accountable to the Seimas, such guarantees, according to the Constitution, must be established by means of a law. However, insofar as the guarantees of both the work of a member of the Seimas at the Seimas and other parliamentary activities are linked only with his/her activity at the Seimas, i.e. with the structure and procedure of activities of the Seimas itself, such guarantees may be established in the Statute of the Seimas.

[...]

... Paragraph 1 of Article 49 of the Constitution, which provides that every working person has the right to rest and leisure as well as to annual paid leave, and Paragraph 4 of Article 60 of the Constitution, which provides that the duties, rights and guarantees of the activities of a member of the Seimas are established by law, give rise to the duty of the legislature to establish, by means of a law, the duration and other conditions of the annual paid leave of the members of the Seimas. It should also be noted that the establishment of the leave of a member of the Seimas by means of a law would also ensure that no preconditions are created for the constitutionally unfounded treatment of the period between the sessions of the Seimas as a period equivalent to the leave of the members of the Seimas or any other type of their rest.

The social guarantees of the persons who are former members of the Seimas are also an element of the constitutional legal status of a member of the Seimas, the essence of which is disclosed by the free mandate of a member of the Seimas as a representative of the Nation. The constitutional norms and principles must also be followed when establishing such guarantees by means of a law.

The limitations applicable to a member of the Seimas (Paragraphs 1, 2, and 3 of Article 60 of the Constitution)

The Constitutional Court's ruling of 1 July 2004

It has been held in this ruling of the Constitutional Court that certain constitutional duties of a member of the Seimas are formulated in the Constitution as certain limitations applied to a member of the Seimas – the incompatibility of the duties of a member of the Seimas with other duties or another occupation, except the cases established in the Constitution, and the prohibition precluding a member of the Seimas from receiving other remuneration, save the exceptions established in the Constitution; such limitations are meant to ensure the free mandate of a member of the Seimas as a representative of the Nation, the continuity

of his/her work at the Seimas and his/her other parliamentary activities. When evaluating the entirety of the limitations consolidated in the Constitution and applicable to a member of the Seimas, it should be held that, in this respect, the constitutional legal status of a member of the Seimas as a representative of the Nation is different in essence from the constitutional legal status of other citizens and determines the particularities of the implementation by a member of the Seimas of certain rights of a person, which are consolidated in the Constitution, since a member of the Seimas has such rights as an individual and a citizen.

... under Article 60 of the Constitution, the duties of the members of the Seimas, with the exception of their duties at the Seimas, are incompatible with any other duties at state institutions or organisations, or with work in business, commercial, or other private establishments or enterprises (Paragraph 1); a member of the Seimas may be appointed only either as the Prime Minister or a minister (Paragraph 2); a member of the Seimas may not receive any other remuneration, with the exception of remuneration for creative activities (Paragraph 3).

... the Constitution is an integral act ... all its provisions are interrelated and constitute a harmonious system ... no provision of the Constitution may be interpreted only literally ... no provision of the Constitution may be interpreted in such a way that the content of another constitutional provision would be distorted or denied, since thereby the essence of the whole constitutional regulation would be distorted and the balance of the values consolidated in the Constitution would be disturbed. Therefore, the provision of Paragraph 1 of Article 60 of the Constitution, whereby the duties of the members of the Seimas are incompatible with any other duties at state institutions or organisations, or with work in business, commercial, or other private establishments or enterprises, should be interpreted when taking account of the provision of this paragraph that a member of the Seimas may hold office at the Seimas, the provision of Paragraph 2 of this article that a member of the Seimas may be appointed only either as the Prime Minister or a minister, and the overall integral constitutional legal regulation, thus, when taking account of all constitutional provisions consolidating the constitutional status of a member of the Seimas (rights and duties of a member of the Seimas, the guarantees of his/her work at the Seimas and his/her other parliamentary activities, limitations applicable to a member of the Seimas, etc.), the constitutional provisions consolidating the rights of a person, as well as the purposes of the constitutional regulation, which comprise, *inter alia*, the purposes on which the functions of the legal regulation established in Paragraph 1 of Article 60 of the Constitution are based, the mission of this regulation with regard to the overall integral constitutional legal regulation, the provision of Paragraph 1 of Article 60 of the Constitution, according to which a member of the Seimas may hold office at the Seimas, the provision of Paragraph 2 of this article, whereby a member of the Seimas may be appointed only either as the Prime Minister or a minister, and also the overall integral constitutional legal regulation in general; account should also be taken of the purposes of the constitutional regulation when interpreting the provision of Paragraph 3 of Article 60 of the Constitution, according to which a member of the Seimas may not receive any other remuneration, with the exception of remuneration for creative activities.

The purpose of the legal regulation established in Paragraph 1 of Article 60 of the Constitution is to ensure the free mandate of a member of the Seimas as a representative of the Nation, the continuity of his/her work at the Seimas and his/her other parliamentary activities, to guarantee that a member of the Seimas acts in the interests of the Nation and the State of Lithuania, but not in his/her personal or group interests, or in the interests of the political parties or political organisation, the public or other organisations, other persons, or the territorial communities that nominated or supported the said person as a candidate for the office of a member of the Seimas, or in the interests of the voters of the constituency in which the said member of the Seimas was elected, that a member of the Seimas will not use his/her status and a free mandate for his/her private benefit, or for the benefit of his/her close relatives or other persons, that each member of the Seimas will have the opportunity to perform his/her constitutional duty to continuously participate at the work of the Seimas, the representation of the Nation, to continuously exercise as a representative of the Nation his/her constitutional powers. This purpose would never be reached or the preconditions precluding the accomplishment of this purpose would be created if a member of the Seimas

also had the possibility of holding other duties or another occupation, with the exception of the office *expressis verbis* specified in the Constitution or the duties allowed under the Constitution; this purpose would never be reached or the preconditions precluding the accomplishment of this purpose would also be created if a member of the Seimas received remuneration other than that specified in the Constitution.

[...]

The Constitution provides for the legal regulation, according to which the incompatibility of the duties of a member of the Seimas with any other duties or work (save the exceptions provided for in the Constitution), where the said incompatibility includes the incompatibility of the duties of a member of the Seimas with engaging in business, commerce, or other profit-making private activity, and the prohibition precluding a member of the Seimas from receiving any other remuneration (save the exceptions provided for in the Constitution) are applied in respect of a member of the Seimas from the moment when he/she acquires all rights of a representative of the Nation, i.e. when he/she takes an oath. The Constitution does not provide that, after taking an oath, a member of the Seimas may, for a certain period of time, hold another office, perform other work (save the exceptions provided for in the Constitution), engage in business, commerce, or other profit-making private activity, and receive other remuneration (save the exceptions provided for in the Constitution). A different interpretation of the Constitution, whereby, purportedly, a member of the Seimas, having taken an oath, for a certain period of time, may still hold another office or perform other work that is incompatible with the duties of a member of the Seimas (save the exceptions provided for in the Constitution), engage in business, commerce, or other profit-making private activity, would be unfounded, as the prohibitions established in the Constitution applicable to a member of the Seimas and specified in this ruling of the Constitutional Court would be disregarded; this would be in violation of the Constitution.

The incompatibility of the duties of a member of the Seimas with other duties or work (save the exceptions provided for in the Constitution), as well as the prohibition precluding a member of the Seimas from receiving other remuneration (save the exceptions provided for in the Constitution), as established in the Constitution, gives rise to the duty of the legislature to establish, by means of a law, such a legal regulation that would make it possible to verify whether the limitations imposed in Article 60 of the Constitution on a member of the Seimas are followed. Such control must be effective, public, and continuous instead of a one-off type.

According to Item 7 of Article 63 of the Constitution, the powers of a member of the Seimas cease when he/she does not give up employment that is incompatible with the duties of a member of the Seimas.

The incompatibility of the duties of a member of the Seimas with other duties or work (Paragraphs 1 and 2 of Article 60 of the Constitution)

The Constitutional Court's ruling of 1 July 2004

One of the limitations imposed on a member of the Seimas by Article 60 of the Constitution is the incompatibility of the duties of a member of the Seimas with other duties and work, save the exceptions *expressis verbis* established or implicitly envisaged in the Constitution.

The expression "The duties of the Members of the Seimas, with the exception of their duties at the Seimas" is used in Paragraph 1 of Article 60 of the Constitution. Under the Constitution, a member of the Seimas may also hold other duties in the Seimas.

The Constitution directly specifies the office at the Seimas that a member of the Seimas is allowed to hold: such office is the office of the Speaker of the Seimas or that of the Deputy Speaker.

... under Article 76 of the Constitution, the structure and procedure of activities of the Seimas are established by the Statute of the Seimas. Thus, the Statute of the Seimas may establish at the Seimas other duties that may be taken by certain members of the Seimas – the duties in the governing body of the Seimas, the duties of the heads of structural subunits of the Seimas, or other duties at the Seimas that may be held only by a member of the Seimas; the Statute of the Seimas may also provide for the possibility for a member of the Seimas to take certain duties in interparliamentary and other international institutions, which may

only be taken by a member of the Seimas – the expression “their duties in the Seimas” of Article 60 of the Constitution also comprises these types of duties.

Thus, the expression “their duties in the Seimas” of Article 60 of the Constitution comprises: (1) the duties of the Speaker of the Seimas and those of the Deputy Speaker of the Seimas; (2) such duties of a member of the Seimas at the Seimas that are taken by a member of the Seimas pursuant to the Statute of the Seimas in the governing body of the Seimas or when heading a structural subunit of the Seimas, as well as other duties that may be taken at the Seimas only by a member of the Seimas; (3) such duties of a member of the Seimas in interparliamentary and other international institutions that may be taken only by a member of the Seimas.

Under the Constitution, the member of the Seimas who is the Speaker of the Seimas is *ex officio* a member of the State Defence Council (Article 140 of the Constitution); in the event that the President of the Republic dies, resigns, or is removed from office according to the procedure for impeachment proceedings, or the Seimas decides that the state of health of the President of the Republic does not allow him/her to hold office, the office of the President of the Republic is temporarily held by the Speaker of the Seimas (Paragraph 1 of Article 89 of the Constitution); the Speaker of the Seimas substitutes for the President of the Republic when the President of the Republic is temporarily abroad or falls ill and, for this reason, is temporarily unable to hold office (Paragraph 2 of Article 89 of the Constitution).

... according to Paragraph 2 of Article 60 of the Constitution, a member of the Seimas may be appointed only either as the Prime Minister or a minister. Thus, according to the Constitution, a member of the Seimas may simultaneously hold the office of the Prime Minister or a minister.

In its rulings, the Constitutional Court has held on more than one occasion that the Constitution consolidates the principle of the separation of powers. The constitutional principle of the separation of powers means, *inter alia*, that persons performing their functions in implementing the power of a certain branch of state power may not at the same time perform the functions implementing another branch of state power, i.e. persons performing the functions implementing legislative power, or executive power, or judicial power may not simultaneously perform the functions implementing both executive power and judicial power, or both legislative power and judicial power, or both legislative power and executive power, save the exceptions provided for in the Constitution. It needs to be noted that the provision of Paragraph 2 of Article 60 of the Constitution, whereby a member of the Seimas may be appointed only either as the Prime Minister or a minister, is an exception established in the Constitution where the same person may simultaneously perform the functions of both the legislative branch (as a member of the Seimas) and the executive branch (as a member of the Government – the Prime Minister or a minister).

It should be noted that the incompatibility of the duties of a member of the Seimas with other duties or work is also *expressis verbis* consolidated from various aspects in other articles of the Constitution. For instance, under the Constitution, the duties of a member of the Seimas are incompatible with the office of the President of the Republic (Paragraph 1 of Article 83 of the Constitution), with actual military service or alternative service, as well as with the duties of an officer, a non-commissioned officer or re-enlistee in the national defence system, the police and the interior, or with the duties of another paid official of paramilitary and security services (Article 141 of the Constitution), with the office of a judge, as well as a justice of the Constitutional Court (Paragraph 1 of Article 113 and Paragraph 3 of Article 104 of the Constitution), and with the office of a member of a municipal council (rulings of 24 December 2002, 30 May 2003).

[...]

To sum up, it should be held that the principle of the incompatibility of the duties of a member of the Seimas with other duties or work means that the duties of a member of the Seimas are incompatible with any other activity (taking a position, performing work, holding a position, fulfilling other functions, performing other tasks, holding the so-called honorary position) in a state establishment, enterprise, organisation of Lithuania, or in a municipal establishment, enterprise, organisation, or in an international establishment, enterprise, organisation, or in a private establishment, enterprise, organisation, or representing such an establishment, enterprise, organisation, with the exception of the duties

expressis verbis or implicitly laid down in the Constitution: (1) the duties of a member of the Seimas that are specified in Paragraph 1 of Article 60 of the Constitution and comprise the office of the Speaker of the Seimas and the Deputy Speaker of the Seimas, such duties of a member of the Seimas in the Seimas that are taken by a member of the Seimas pursuant to the Statute of the Seimas in the governing body of the Seimas or when heading a structural subunit of the Seimas, other duties that may be taken in the Seimas only by a member of the Seimas, or the duties of a member of the Seimas in interparliamentary and other international institutions in cases where such duties may be taken only by a member of the Seimas; (2) the office of the Prime Minister or a minister, as specified in Paragraph 2 of Article 60 of the Constitution; (3) the duties in the associations that are specified in the Constitution where such duties are linked with his/her membership in the respective association.

The constitutional concept of the duties and work that are incompatible with the duties of a member of the Seimas (Paragraph 1 of Article 60 of the Constitution)

The Constitutional Court's ruling of 1 July 2004

... the notions “duties” and “work” used in Paragraph 1 of Article 60 of the Constitution are constitutional notions, they have the constitutional content and may not be interpreted only on the basis of the definition of similar concepts in laws and other legal acts (for example, in legal acts regulating employment or public service relations). In this regard, the duties and work specified in Paragraph 1 of Article 60 of the Constitution may not be linked with employment or similar contracts or agreements.

The notion “duties” used in the phrase “duties at state institutions or organisations” in Paragraph 1 of Article 60 of the Constitution and the notion “work” used in the phrase “work in business, commercial, or other private establishments or enterprises” in this paragraph should be interpreted by taking into consideration the purpose of the constitutional legal regulation established in this article, as well as all other constitutional provisions consolidating the constitutional status of a member of the Seimas. It should be noted that carrying out “duties” implies that the person who carries out the duties of certain office must perform certain work, fulfil certain other functions, perform certain other tasks, etc.; performing “work” implies that a person must take certain office, fulfil certain other functions, perform certain other tasks, etc. The notion “duties” used in the phrase “duties at state institutions or organisations” in Paragraph 1 of Article 60 of the Constitution and the notion “work” used in the phrase “work in business, commercial, or other private establishments or enterprises” in this paragraph mean activity; therefore, in the context of the overall constitutional integral regulation, these notions may not be confronted and they may not be interpreted literally, by ignoring their correlations.

The notion “duties” used in the phrase “duties at state institutions or organisations” in Paragraph 1 of Article 60 of the Constitution comprises any activity in a state or municipal establishment, enterprise, or organisation of Lithuania, in a foreign or international establishment, enterprise, or organisation, or when representing such an establishment, enterprise, or organisation, if this activity is linked with taking a position, performing work, holding a position, fulfilling other functions, performing other tasks, holding the so-called honorary position, etc. (including participation in collegial management, control, and other bodies), irrespective of whether this activity is permanent, temporary, or one-off (episodic), whether this activity is remunerated in any payment or other form, whether this activity is referred to in legal acts as duties or otherwise, whether this activity is carried out in a leading position, whether a person is elected or appointed in order to carry out such activity, whether this activity is formalised on the basis of a legal contract or another legal act, or is performed without any legal contract or legal act, save the exceptions that are established *expressis verbis* or implicitly provided for in the Constitution and are specified in this ruling of the Constitutional Court. The notion “work” used in the phrase “work in business, commercial, or other private establishments or enterprises” in Paragraph 1 of Article 60 of the Constitution in its turn comprises any activity in a Lithuanian private establishment, enterprise, or organisation or in a foreign or international private establishment, enterprise, or organisation, or when representing such an establishment, enterprise, or organisation, if this activity is linked with performing work, taking a position, holding a position, fulfilling other functions, performing other tasks, holding the so-called honorary position, etc.

(including participation in collegial management, control, and other bodies), irrespective of whether this activity is permanent, temporary, one-off (episodic), whether this activity is remunerated in any payment or other form, whether this activity is referred to in legal acts as work or otherwise, whether there are any other persons engaged in any activity in this establishment, enterprise, or organisation, whether this activity is carried out in a leading position, whether a person is elected or appointed in order to carry out such activity, whether this activity is formalised on the basis of a legal contract or another legal act, or is performed without any legal contract or legal act; the notion “work” used in the phrase “work in business, commercial, or other private establishments or enterprises” of Paragraph 1 of Article 60 of the Constitution also comprises any other private profit-making activity, as well as any profit-making activity engaged in without establishing an enterprise, establishment, or organisation.

The prohibition precluding a member of the Seimas from engaging in business, commerce, or other profit-making activity (Articles 23, 46, and 48 and Paragraph 1 of Article 60 of the Constitution)

The Constitutional Court’s ruling of 1 July 2004

... the constitutional legal status of a member of the Seimas as a representative of the Nation is different in essence from the constitutional legal status of other citizens and determines the particularities of the implementation by a member of the Seimas of certain rights of a person, which are consolidated in the Constitution, since a member of the Seimas has such rights as an individual and a citizen.

The legal regulation laid down in Paragraph 1 of Article 60 of the Constitution should be interpreted in view of the provisions of Articles 46 and 48 of the Constitution.

Paragraph 1 of Article 46 of the Constitution stipulates that the economy of Lithuania is based on the right of private ownership, freedom of individual economic activity, and economic initiative. Paragraph 1 of Article 48 of the Constitution, *inter alia*, prescribes that everyone may freely choose an occupation or business.

The constitutional legal status of a member of the Seimas as a representative of the Nation, comprising, *inter alia*, the limitations established in Paragraph 1 of Article 60 of the Constitution, determines the particularities of the implementation of everyone’s rights consolidated in Article 46 and 48 of the Constitution where such rights are exercised by a member of the Seimas as by any other person in the same manner. It needs to be noted that the provisions of Paragraph 1 of Article 60 of the Constitution, in view of the purpose of the legal regulation established in this paragraph, mean also that such a member of the Seimas who is a founder, owner, co-owner, or shareholder of a private enterprise, establishment, or organisation may not take a position, perform work, hold a position, fulfil other functions, perform other tasks, hold the so-called honorary position, etc. (including participation in collegial management, control, and other bodies) in the said establishment, enterprise, or organisation, or represent it. This is incompatible with the constitutional legal status of a member of the Seimas: having acquired all rights of the representative of the Nation, the member of the Seimas decides that he/she will be a representative of the Nation and will not be engaged in business, commerce, or other profit-making private activity.

... under the Constitution, a member of the Seimas, as a representative of the Nation, must properly fulfil his/her constitutional obligation to represent the entire Nation, must act only in the interests of the Nation and the State of Lithuania ... the activity of a member of the Seimas, a representative of the Nation, is continuous. A member of the Seimas must use his/her mandate of a representative of the Nation only in the interests of the Nation and the State of Lithuania but not for his/her private benefit, or for the benefit of his/her close relatives or other persons. The incompatibility of the duties of a member of the Seimas (such incompatibility is consolidated in Paragraph 1 of Article 60 of the Constitution) with work in business, commercial, or other private establishments or enterprises, as well as with work in establishments or enterprises a founder, owner, co-owner, or shareholder of which a member of the Seimas is, gives rise to the prohibition on engaging, in any form, in business, commerce, or other profit-making private activity. When deciding whether a certain activity of a member of the Seimas is engagement in business, commerce, etc., in each case account should be taken of the content of the activity and all other circumstances.

The legal regulation laid down in Paragraph 1 of Article 60 of the Constitution should also be interpreted with regard to the provisions of Article 23 of the Constitution.

[...]

The legal regulation established in Paragraph 1 of Article 60 of the Constitution may not be interpreted as denying the essence of the right of ownership that is consolidated in Article 23 of the Constitution. Members of the Seimas also have this right. Thus, the provisions of Paragraph 1 of Article 60 of the Constitution that consolidate the incompatibility of the duties of a member of the Seimas with, *inter alia*, engaging in business, commerce, or other profit-making private activity may not be interpreted as meaning the prohibition precluding a member of the Seimas from using his/her property, receiving income from such property, possessing property owned by him/her, etc., as well as concluding related contracts. However, under the Constitution, such activity of a member of the Seimas where he/she uses his/her property, receives income from such property, possesses property owned by him/her, etc., as well as concludes related contracts, may not take the form of business, commerce, or other profit-making private activity, as this would violate the prohibition consolidated in Paragraph 1 of Article 60 of the Constitution precluding a member of the Seimas from engaging, in any form, in business, commerce, or other profit-making private activity.

It should be noted that the activity of a member of the Seimas where he/she uses his/her property, receives income from such property, possesses property owned by him/her, etc., as well as concludes the related contracts, may have certain specific features in each area. The legislature, while paying regard to the Constitution, has the duty to establish, by means of a law, such a regulation that would make it possible to decide in each case what activity of a member of the Seimas constitutes only the use of his/her property, receiving income from such property, possessing property owned by him/her, and concluding related contracts, i.e. the activity that is allowed for a member of the Seimas under the Constitution, and what activity constitutes business, commerce, or other profit-making private activity, i.e. the activity that is not allowed for a member of the Seimas under the Constitution.

It should be noted that, in order to ensure that the prohibition (established in Paragraph 1 of Article 60 of the Constitution) precluding a member of the Seimas from engaging in business, commerce, or other profit-making private activity, the Constitution gives rise to the duty of the legislature to establish a legal regulation that would make it possible to verify in each case whether using the property of a member of the Seimas, receiving income from such property, possessing property owned by him/her, and concluding related contracts constitutes business, commerce, or other profit-making private activity. Such control must be effective, public, and continuous instead of a one-off type.

When laying down, by means of a law, the specified constitutionally necessary legal regulation, the legislature must also establish the ways of providing for the legal conditions for preventing the emergence of incompatibility of the duties of a member of the Seimas with engaging in business, commerce, or other profit-making private activity. Such a legal regulation would also create the preconditions for avoiding the use of the mandate of a member of the Seimas for the private benefit of certain persons, i.e. to serve particular interests, rather than in the interests of the Nation and the State of Lithuania, and for avoiding a conflict between the private interests of a member of the Seimas and the interests of the Nation and the State of Lithuania, i.e. public interests; this would strengthen the trust of the Nation in members of the Seimas as representatives of the Nation and in the Seimas as the representation of the Nation. Such control is an important condition of implementing the provision of Item 7 of Article 63 of the Constitution, under which the powers of a member of the Seimas cease when he/she takes up or does not give up employment that is incompatible with the duties of a member of the Seimas.

Attention should be drawn to the fact that various methods of ensuring the incompatibility of the duties of a member of the parliament and engagement in business, as well as control over such incompatibility, is established in foreign democratic states under the rule of law as, for instance, the property of a member of the parliament is held in trust or such property must be transferred to other persons, such property is possessed anonymously, control is exercised over agreements concluded between the enterprises a founder,

owner, co-owner, or a shareholder of which a member of the parliament is on the one hand, and the establishments, enterprises, and organisations of the public sector on the other hand, etc.

The right of a member of the Seimas to be a member of and take a position in an association (Article 35 of the Constitution)

The Constitutional Court's ruling of 1 July 2004

The principle of the incompatibility of the duties of a member of the Seimas with other duties and work, as established in the Constitution, as well as the prohibition precluding a member of the Seimas from receiving any other remuneration save the exceptions provided for in the Constitution, should be interpreted in the context of the constitutional rights and freedoms of persons, *inter alia*, the right of citizens to freely form societies, political parties, and associations (Article 35 of the Constitution), and the right of employees to establish trade unions (Article 50 of the Constitution).

[...]

... under the Constitution, the legislature may not establish any such a legal regulation that would limit the right of a member of the Seimas to be a member of an association specified in the Constitution and to take a position in such an association, as, in respect of the said person, this would violate the constitutional value – the right to associate or freedom of association.

The prohibition precluding a member of the Seimas from receiving other remuneration (Paragraph 3 of Article 60 of the Constitution)

The Constitutional Court's ruling of 1 July 2004

Another limitation imposed on a member of the Seimas by Article 60 of the Constitution is the prohibition precluding a member of the Seimas from receiving other remuneration, save the exceptions *expressis verbis* established or implicitly provided for in the Constitution

It needs to be stressed that the notion “remuneration” used in Paragraph 3 of Article 60 of the Constitution is a constitutional notion: it bears the constitutional content and may not be interpreted only following the definition of analogous notions in laws and other legal acts (for example, legal acts regulating employment or public service relations). In this regard, the remuneration specified in Paragraph 3 of Article 60 of the Constitution may not be linked only with remuneration paid under employment or similar contracts or agreements; the content of the notion “remuneration” used in Paragraph 3 of Article 60 of the Constitution is much broader: this notion comprises monetary payments of various types and the provision of other material benefit to a member of the Seimas.

... the Constitution treats a member of the Seimas as a professional politician, i.e. as such a representative of the Nation whose work at the Seimas is his/her professional activity. ... under Paragraph 3 of Article 60 of the Constitution, the work of the members of the Seimas, as well as all expenses relating to their parliamentary activities, is remunerated from the state budget.

Under Paragraph 3 of Article 60 of the Constitution, a member of the Seimas has the right to receive the remuneration of a member of the Seimas. ... in order that a member of the Seimas would be able to properly fulfil his/her duty as the one of a representative of the Nation, the remuneration of a member of the Seimas must be of a sufficient amount and it must be paid regularly; during the term of office of the Seimas, it is not allowed to establish, by means of a law, the remuneration of a member of the Seimas that is smaller from the one existing at the beginning of the term of office of the Seimas.

... under Paragraph 3 of Article 60 of the Constitution, expenses relating to the parliamentary activities of a member of the Seimas are remunerated from the state budget. In this context, it needs to be noted that such funds may be used only for the purpose specified in the Constitution, i.e. the parliamentary activity of a member of the Seimas. The legislature must establish the legal regulation that should make it possible to verify each time whether these funds are used for their intended purpose.

... a member of the Seimas may also take other duties in the Seimas, including the office of the Speaker of the Seimas and the Deputy Speaker of the Seimas, such duties of a member of the Seimas in the Seimas that are taken by a member of the Seimas pursuant to the Statute of the Seimas in the governing body of

the Seimas or when heading a structural subunit of the Seimas, as well as such duties of a member of the Seimas in interparliamentary and other international institutions in cases where such duties may be taken only by a member of the Seimas.

It should be held that the constitutional right of a member of the Seimas to take such duties in the Seimas implies the right to receive additional remuneration established by law for taking such duties.

... according to the Constitution, a member of the Seimas may simultaneously hold the office of the Prime Minister or a minister. In its ruling of 9 November 1999, the Constitutional Court held that the constitutional right of a member of the Seimas to hold the office of the Prime Minister or that of a minister implies the right to receive remuneration for holding such office; this is confirmed by Article 99 of the Constitution, whereby the Prime Minister and ministers receive remuneration established for their respective governmental duties. It was also held in the Constitutional Court's ruling of 9 November 1999 that for such a member of the Seimas who is appointed either as the Prime Minister or a minister different remuneration from that of other members of the Seimas may be established for his/her activities as a member of the Seimas. However, under the Constitution, the Seimas, while having the discretion to establish, by means of a law, different remuneration for such a member of the Seimas who is appointed either as the Prime Minister or a minister from that of other members of the Seimas is bound by the constitutional requirement that in this case the amount of the remuneration of such a member of the Seimas must also be sufficient in order that the said member of the Seimas would be able to properly perform his/her duty as the one of a representative of the Nation.

... a member of the Seimas may take a position in associations specified in the Constitution where such a position is linked with his/her membership in the respective association. It should be noted that the constitutional prohibition precluding a member of the Seimas from receiving other remuneration, save the exceptions provided for in the Constitution itself, means that, under the Constitution, a member of the Seimas may not receive any remuneration for holding a position or other activity in societies, political parties or associations, or other unions.

As mentioned before, the content of the notion "remuneration" used in Paragraph 3 of Article 60 of the Constitution is broad: it comprises monetary payments of various types or the provision of other material benefit to a member of the Seimas. Therefore, under the Constitution, such a member of the Seimas who takes a certain position in an association has no right to receive from such an association remuneration for holding such a position or any other monetary payment, as well as any other material benefit.

[...]

In conclusion, it should be held that the constitutional prohibition precluding a member of the Seimas from receiving any remuneration other than that of a member of the Seimas means that a member of the Seimas may not receive any other remuneration, with the exception of the remuneration *expressis verbis* specified or implicitly provided for in the Constitution: (1) remuneration for the duties of a member of the Seimas that are specified in Paragraph 1 of Article 60 of the Constitution and comprise the office of the Speaker of the Seimas and the Deputy Speaker of the Seimas, such duties of a member of the Seimas in the Seimas that are taken by a member of the Seimas pursuant to the Statute of the Seimas in the governing body of the Seimas or when heading a structural subunit of the Seimas, other duties that may be taken in the Seimas only by a member of the Seimas, or the duties of a member of the Seimas in interparliamentary and other international institutions in cases where such duties may be taken only by a member of the Seimas; (2) remuneration for holding the office of the Prime Minister or a minister; (3) remuneration for creative activities where a member of the Seimas carries them out not in the capacity of a subject of employment, state service, or similar relationships.

The right of a member of the Seimas to receive remuneration for creative activities; the constitutional concept of creative activities (Paragraph 3 of Article 60 of the Constitution)

The Constitutional Court's ruling of 1 July 2004

... according to Article 60 of the Constitution, a member of the Seimas is not prohibited from receiving remuneration for creative activities.

When interpreting the constitutional notion of creative activities, it needs to be noted that Paragraph 1 of Article 42 of the Constitution provides that culture, science and research, and teaching are free; Paragraph 3 of this article provides that the law protects and defends the spiritual and material interests of an author that are related to scientific, technical, cultural, and artistic work. According to the Constitution, creative activities are activities in the area of science, technology, culture or art, aimed at creating a certain result, i.e. qualitatively new, original, and specific material or spiritual values of science, technology, culture, or art, which have never existed before. Creative activities may be continuous, professional, and one-off(episodic).

The notion of creative activities, which is consolidated in the Constitution, is integral and its content does not depend, *inter alia*, on persons who are engaged in them. In this regard, there is no difference between the creative activities of a member of the Seimas and the creative activities of any other individual.

... the constitutional legal status of a member of the Seimas, a representative of the Nation, determines the particularities of the implementation by a member of the Seimas of certain rights of a person, which are consolidated in the Constitution, since a member of the Seimas has such rights as an individual and a citizen.

It has ... been held in this ruling that, according to the Constitution, the duties of a member of the Seimas are incompatible with any other activity (taking a position, performing work, holding a position, fulfilling other functions, performing other tasks, holding the so-called honorary position) in a state establishment, enterprise, organisation of Lithuania, or in a municipal establishment, enterprise, organisation, or in an international establishment, enterprise, organisation, or in a private establishment, enterprise, organisation, or representing such an establishment, enterprise, organisation, with the exception of the duties of a member of the Seimas that are specified in Paragraph 1 of Article 60 of the Constitution, the office of the Prime Minister or a minister, as specified in Paragraph 2 of Article 60 of the Constitution, and a position in the societies, political parties or associations, other unions, where such a position is linked with his/her membership in the respective association.

When interpreting the provisions of Article 42 and Article 60 of the Constitution in a systemic manner, it should be held that the creative activities of a member of the Seimas are separated from employment, state service, or similar relationships and from holding a position in any establishment, enterprise, or organisation.

Thus, one of the specific features of freedom of the creative activities of a member of the Seimas is that a member of the Seimas exercises this freedom not in the capacity of a subject of employment, state service, or similar relationships.

Remuneration may be paid to an author for his/her creative activities. It is generally recognised that remuneration for creative activities is regulated by the norms of copyright law.

... the concept of creative activities is used not only in Paragraph 3 of Article 60, but also in other articles (parts thereof) of the Constitution. For instance, Paragraph 1 of Article 83 of the Constitution provides that the President of the Republic, *inter alia*, may not receive any remuneration other than the remuneration established for the President of the Republic and remuneration for creative activities; Article 99 of the Constitution provides that the Prime Minister and ministers, *inter alia*, may not receive any remuneration other than that established for their respective governmental duties and payment for creative activities; Paragraph 1 of Article 113 of the Constitution provides that judges, *inter alia*, may not receive any remuneration other than the remuneration established for judges and payment for educational or creative activities.

It is clear from the phrase “payment for educational or creative activities” in Paragraph 1 of Article 113 of the Constitution that the constitutional concepts of educational and creative activities are not identical and that each of them has its own independent content. These concepts may not be identified with one another, they are not synonyms, and none of them covers the other. Educational activities in the Constitution are separated from creative activities: educational activities are linked with education, teaching and training at educational and teaching establishments (including higher schools), whereas creative activities, as already mentioned before, are activities aimed at creating a piece of science, technology, culture, or art.

The continuity of the activities of a member of the Seimas

The Constitutional Court’s decision of 10 February 2005

It was held in [the Constitutional Court’s ruling of 1 July 2004] that the continuity of the activity of the Seimas implies the continuity of the activity of a member of the Seimas, as a representative of the Nation. Participation in the work of the Seimas is a constitutional duty and at the same time a right of a member of the Seimas; this means, *inter alia*, that it is not allowed to establish any such a legal regulation that, on the one hand, would allow a member of the Seimas not to participate in the work of the Seimas without duly justified exceptional reasons, and, on the other hand, would not allow or would worsen in other ways the possibilities for him/her to participate in the work of the Seimas. The constitutional duty of a member of the Seimas to participate in the work of the Seimas includes, *inter alia*, his/her duty to participate in the work of the structural subunits of the Seimas of which he/she is a member and to exercise other powers of a member of the Seimas, which are established in the Constitution, laws, and the Statute of the Seimas.

[...]

Undoubtedly, situations may occur where, due to especially important personal and other justified reasons, for a certain period of time, a member of the Seimas cannot participate in the sittings of the Seimas, the committees of the Seimas, or other structural subunits of which he/she is a member, and/or for a certain period of time he/she cannot perform other duties of a member of the Seimas. This implies the necessity to establish a procedure according to which, in the aforesaid cases, such a member of the Seimas should apply to the institution indicated in the law (in the Statute of the Seimas) for permission not to participate for the said period of time in the sittings of the Seimas, the committees of the Seimas, or other structural subunits of which he/she is a member, and not to perform for the said period of time other duties of a member of the Seimas; if the reasons specified by a member of the Seimas are especially important and justified, the aforementioned permission is granted; if such permission is not granted, the absence of a member of the Seimas from the sittings of the Seimas, the committees of the Seimas, other structural subunits of which he/she is a member, or failure to perform other duties of a member of the Seimas would be unjustified.

Situations may also arise where a member of the Seimas cannot notify the institution specified by means of a law (by the Statute of the Seimas) before a particular sitting begins that he/she will not attend that sitting. The legislature is also obliged to establish the procedure enabling the institution specified by means of a law (by the Statute of the Seimas) to decide whether the reasons of failure by the said members of the Seimas to attend a particular sitting were especially important and justified.

If a member of the Seimas has not participated in the sitting of the Seimas, of a committee, or of another structural subunit of the Seimas of which he/she is a member – regardless of whether or not he/she notified in advance about his/her absence following the established procedure, or whether or not he/she received permission from the respective institution indicated in the law (in the Statute of the Seimas) – the said time, according to the Constitution, is considered neither the time when the said member of the Seimas performed the work of a member of the Seimas indicated in Paragraph 3 of Article 60 of the Constitution, remunerable from the state budget, nor the time when the same member of the Seimas made use of the right established in Paragraph 1 of Article 49 of the Constitution to annual paid leave.

It should be noted that the exercise of the powers of a member of the Seimas is not limited to his/her participation in the sittings of the Seimas, its committees, or its other structural subunits. In this context it

should be mentioned that the exercise of the powers of a member of the Seimas and, thus, the work of a member of the Seimas referred to in Paragraph 3 of Article 60 of the Constitution, also constitute the activity of a member of the Seimas when he/she carries out assignments and other tasks of the Seimas, its committees, or its other structural subunits, where, in the cases established by law, he/she represents groups of members of the Seimas, etc. The work of a member of the Seimas and his/her activity in the Seimas include performing the duties specified in Paragraph 1 Article 60 of the Constitution (office of the Speaker or the Deputy Speaker of the Seimas; such duties of a member of the Seimas at the Seimas that are taken by a member of the Seimas pursuant to the Statute of the Seimas in the governing body of the Seimas or when heading a structural subunit of the Seimas, as well as other duties that may be taken at the Seimas only by a member of the Seimas; such duties of a member of the Seimas in interparliamentary and other international institutions where the said duties may be taken only by a member of the Seimas ...).

Such an activity of a member of the Seimas is the work of a member of the Seimas specified in Paragraph 3 of Article 60 of the Constitution; such work is remunerated from the state budget.

It should also be mentioned that, according to Paragraph 2 of Article 60 of the Constitution, a member of the Seimas can be appointed either as the Prime Minister or a minister. This implies the possibility of regulating their employment relationships at the Seimas in a differentiated manner; the legislature has a certain degree of discretion in this sphere.

The annual paid leave of the members of the Seimas

The Constitutional Court's decision of 10 February 2005

When interpreting the provision that the activity of the Seimas is continuous ... in conjunction with the provision that the legislature has the constitutional duty to establish, by means of a law, the duration and other conditions of annual paid leave of a member of the Seimas, it should be held that the continuity of the activity of the Seimas as the representation of the Nation and the institution of legislative power and the continuity of the activity of a member of the Seimas as a representative of the Nation and a professional politician in no way implies that a member of the Seimas should not or cannot exercise the constitutional right that he/she has as any other working person to rest and leisure as well as to annual paid leave. Namely because the Constitution treats a member of the Seimas as a professional politician and due to the fact that, according to the Constitution, the work of a member of the Seimas is a permanent occupation for which a member of the Seimas receives remuneration and the proper performance of which must be ensured both by certain social guarantees and by the special guarantees of parliamentary work, which are established in the Constitution and laws, the constitutional right of a member of the Seimas to rest and leisure, as well as to annual paid leave, cannot be denied, nor can the exercise of this right be restricted without sufficient grounds.

It should be especially emphasised that, according to the Constitution, during a rest period, at leisure time, or during annual paid leave a member of the Seimas does not lose his/her status of a representative of the Nation: a member of the Seimas retains his/her status of a representative of the Nation while at work during the sessions of the Seimas, those of the committees of the Seimas or of other structural subunits when such sittings take place not during the session of the Seimas, as well as during a rest period, at leisure time or during annual paid leave; the Seimas, even when the representatives of the Nation are on leave, does not cease to be the representation of the Nation and the institution of legislative power.

The provision [of the Constitutional Court's ruling of 1 July 2004], whereby the legislature has the duty to establish, by means of a law, the duration and other conditions of the annual paid leave of a member of the Seimas, means, *inter alia*, that the leave of the members of the Seimas must be established not by means of any type of legal acts passed by the Seimas, but precisely by means of a law, also that such a law should determine the duration of the annual paid leave of a member of the Seimas, the amount of remuneration for leave, and other essential conditions of leave.

The aforementioned provision does not mean that a law should determine a fixed time that would be the same each year for the annual paid leave of the members of the Seimas (concrete dates of its beginning

and end). The Seimas, taking into consideration its agenda, considered issues, and other circumstances, can establish the time for the annual paid leave of the members of the Seimas each year separately by means of a substatory act – a resolution of the Seimas; this resolution must be adopted on the basis of the law establishing, *inter alia*, the duration of the annual paid leave of the members of the Seimas.

Establishing, by means of a law, the duration of the annual paid leave of the members of the Seimas, as well as determining the beginning and end of the annual paid leave of the members of the Seimas each year (by means of a resolution of the Seimas), regard should be paid to the constitutional imperative that the participation in the work of the Seimas is a constitutional duty and, at the same time, a right of a member of the Seimas, also to the fact that the constitutional duty of a member of the Seimas to participate in the work of the Seimas includes, *inter alia*, his/her duty to participate in the work of the structural subunits of the Seimas of which he/she is a member and to exercise other powers of a member of the Seimas, which are established in the Constitution, laws, and the Statute of the Seimas. The sittings of the Seimas take place during regular and extraordinary sessions. Thus, when a session of the Seimas takes place, a member of the Seimas cannot be on annual paid leave, save the exceptions described below concerning the time of the annual paid leave of the Speaker of the Seimas and the Deputy Speaker (Deputy Speakers) of the Seimas.

When establishing, by means of a law, the duration of the annual paid leave of the members of the Seimas, as well as its beginning and end (by means of a resolution of the Seimas), it is necessary to take into account that, as mentioned before, the sittings of the committees of the Seimas and other structural subunits in which members of the Seimas must participate are convened not only during the sessions of the Seimas, but also at the time when there are no sessions of the Seimas, as well as that, between the sessions of the Seimas the Seimas, its committees and other structural subunits, individual members of the Seimas and their groups also carry out other activities established in the Constitution, the Statute of the Seimas, and laws. Thus, a member of the Seimas cannot be on annual paid leave at the time when sittings of the committees of the Seimas and other structural subunits (in which the members of the Seimas must participate) take place, and when the activities of the Seimas, its committees, and other structural subunits established in the Constitution, the Statute of the Seimas, and laws are carried out, even though the session of the Seimas does not take place, save the exceptions described below concerning the annual paid leave of the Speaker of the Seimas and the Deputy Speaker (Deputy Speakers) of the Seimas.

The constitutional imperatives of the continuity of the activity of the Seimas and the continuity of the activity of a member of the Seimas and the necessity to ensure the right of a member of the Seimas to annual paid leave established in Paragraph 1 of Article 49 of the Constitution, when these constitutional requirements are interpreted in the context of one another, imply that the legislature, while regulating the relationships linked with the annual paid leave of a member of the Seimas, can and must determine the time when the sittings of the Seimas, as well as the sittings of the committees of the Seimas and other structural subunits, do not take place and when no other activity of the Seimas, the committees of the Seimas, or other structural subdivisions established in the Constitution, the Statute of the Seimas, and laws is carried out. The annual paid leave of the members of the Seimas can be established at that particular time by means of a resolution of the Seimas. According to the Constitution, the annual paid leave of a member of the Seimas cannot be established at any other time, save the further described exceptions established in the Constitution concerning the time of the annual paid leave of the Speaker of the Seimas and the Deputy Speaker (Deputy Speakers) of the Seimas.

The nature, constitutional mission of the Seimas as the representation of the Nation and the institution of legislative power, the particularities of the functioning and organisation of the work of the Seimas and the legal constitutional status of a member of the Seimas as a representative of the Nation and a professional politician determine the fact that all the members of the Seimas must take annual paid leave at the same time.

At the same time, it should be noted that, as mentioned before, certain exceptions are established in the Constitution concerning the time of the annual paid leave of the Speaker of the Seimas and the Deputy Speaker (Deputy Speakers) of the Seimas. The time of the annual paid leave of the state officials mentioned

in the Constitution – the Speaker of the Seimas and the Deputy Speaker (Deputy Speakers) of the Seimas – must be established by taking into consideration the fact that these officials must be able, if necessary, to immediately perform their duties under the Constitution, laws, and the Statute of the Seimas. The possibility of establishing a differentiated legal regulation of the time for the annual paid leave of the Speaker of the Seimas and the Deputy Speaker (Deputy Speakers) of the Seimas (compared with the legal regulation of the time for the annual paid leave of other members of the Seimas) is the only exception to the regulation of the aforementioned relationships established in the Constitution. Nevertheless, while establishing a different time for the annual paid leave for the Speaker of the Seimas and the Deputy Speaker (Deputy Speakers) of the Seimas, it is necessary to ensure that these officials would be able to perform their duties in such a way that would not interrupt the work of the Seimas, *inter alia*, the fact that the Speaker of the Seimas would be able to perform the duties (laid down in Paragraph 2 of Article 70 of the Constitution) of promulgating legal acts (Statute of the Seimas or other substatutory acts of the Seimas).

The Seimas has discretion to establish the duration of the annual paid leave of a member of the Seimas. At the same time, it should be stressed that, when establishing this duration, the Seimas is bound by the constitutional imperative of an open, just and harmonious civil society and the constitutional principle of the equality of the rights of all persons, which does not allow granting privileges to any group of people or discriminating them, *inter alia*, on the basis of their social status. Therefore, the annual paid leave of a member of the Seimas cannot be shorter than the minimal duration of leave established in laws; however, such leave may not be unreasonably long; all differences (compared with the duration of the holidays of other working people) in the annual paid leave of a member of the Seimas, no matter what such differences are, must be constitutionally justifiable.

... the Constitution establishes the possibility of convening extraordinary sessions of the Seimas ... if necessary, the Seimas can decide to prolong a regular session. If a decision is made to prolong a regular session or an extraordinary session is convened, the members of the Seimas must convene to it even though they are on annual paid leave at that time. In such cases, the Seimas, ensuring the right of a member of the Seimas to annual paid leave (this right is provided for in Paragraph 1 of the Article 49 of the Constitution), can and should determine a different time when the sittings of the Seimas, as well as the sittings of the committees of the Seimas and other structural subunits, do not take place, the activity of the Seimas, its committees, and other structural subunits established in the Constitution, the Statute of the Seimas and laws is not carried out, in order that the members of the Seimas could exercise their constitutional right to annual paid leave instead of the time that was used by the members of the Seimas for a prolonged regular session of the Seimas or for an extraordinary session of the Seimas.

It should be noted that, according to the Constitution, such a legal situation where, after the leave of the members of the Seimas is over, the committees and other structural subunits of the Seimas do not function and the time remaining until the beginning of the next session of the Seimas is treated as that equal to the leave of the members of the Seimas or to their other leisure time is impermissible.

[...]

In summary, it should be held that, after establishing the duration and other conditions of the annual paid leave of a member of the Seimas, the right of a member of the Seimas to annual paid leave, as consolidated in Paragraph 1 of the Article 49 of the Constitution, would be ensured. On the other hand, as it was held in [the Constitutional Court's ruling of 1 July 2004], the consolidation of the leave of the members of the Seimas, by means of a law, would also ensure that no preconditions would be created for the constitutionally unfounded treatment of the period between the sessions of the Seimas as a period equivalent to the leave of the members of the Seimas or to any other type of their rest.

In the light of the foregoing arguments, it should be held that the notion "continuity of the activity of the Seimas" used in [the Constitutional Court's ruling of 1 July 2004] does not mean that the continuity of the work of the Seimas would be violated if the paid annual leave provided for in Paragraph 1 of the Article 49 of the Constitution was granted to all the members of the Seimas during the period between the sessions of the Seimas, save the exceptions, which arise out of the Constitution, concerning the time for

the annual paid leave of the Speaker of the Seimas and the Deputy Speaker (Deputy Speakers) of the Seimas.

The prohibition precluding a member of the Seimas from engaging in business, commerce, or other profit-making activity (Paragraphs 1 and 3 of Article 60 of the Constitution): the right of a member of the Seimas to possess and manage property owned by him/her, to conclude the related contracts, and to engage in farming

The Constitutional Court's decision of 10 February 2005

The prohibition, established in Paragraph 1 of Article 60 of the Constitution, precluding a member of the Seimas from taking any other office in state establishments or organisations and from having another occupation in business, commerce and other private establishments or enterprises, as well as the prohibition, established in Paragraph 3 of the same article, precluding a member of the Seimas from receiving any other remuneration except for the remuneration of a member of the Seimas and remuneration for creative activities ... does not mean that a member of the Seimas cannot use, manage, etc. property owned by him/her, as well as conclude related contracts. However, the activity of a member of the Seimas where he/she uses his property, receives income from such property, possesses property owned by him/her, etc., as well as concludes related contracts, according to the Constitution, may not take the form of business, commerce, or other profit-making private activity ...

At the same time, it should be noted that the management of property owned by persons and other related activities can bear particularities that are determined by various factors – the nature of this property, the circumstances of its acquisition, the fact whether other persons have any rights to such property, etc. It is these various factors that may determine whether the use, management, etc. of property owned by a person, receiving income from such activity, as well as concluding related contracts, in some cases take the form of a business, commerce, or other profit-making activity, and in other cases they do not. Within the context of the issue under consideration, it should also be noted that the activity that is described as farming is usually linked with the use, management, etc. of land, forests, water bodies as well as objects of living nature as objects of property; therefore, this activity has specific particularities.

[...]

... while evaluating if a certain activity of a member of the Seimas, related to using, managing, etc. property owned by a member of the Seimas, receiving income from it, as well as concluding related contracts, is compatible or incompatible with the constitutional legal status of a member of the Seimas, from the viewpoint of the Constitution it is not only important how a particular activity is defined in laws or other legal acts, but, first of all, it is important whether the activity actually performed by a member of the Seimas is an occupation prohibited for a member of the Seimas under the Constitution, and whether such activity takes the form of business, commerce, or other activity, which is prohibited by the Constitution.

Taking into consideration the fact that the activity defined as farming can be distinguished by certain particularities, the fact alone that profit is received from such activity does not mean that this activity takes the form of business, commerce, or other activity, which is prohibited by the Constitution. According to the Constitution, the legislature has the duty to establish such a legal regulation that would make it possible, in each case when doubts arise whether a certain activity described as farming (regardless of how it is defined in laws or other legal acts) undertaken by a member of the Seimas has taken the form of business, commerce, or other activity prohibited for a member of the Seimas under the Constitution, to ascertain all factual circumstances, evaluate the said activity, and determine whether the aforementioned activity is compatible with the legal constitutional status of a member of the Seimas.

In the light of the foregoing arguments, it should be held that the statement “the notion ‘work’ used in the phrase ‘work in business, commercial, or other private establishments or enterprises’ of Paragraph 1 of Article 60 of the Constitution also comprises any other private profit-making activity, as well as any profit-making activity engaged in without establishing an enterprise, establishment, or organisation” ... of [the Constitutional Court’s ruling of 1 July 2004] does not mean that any activity that can be described as

farming is incompatible as such with the constitutional legal status of a member of the Seimas (if such activity has not taken the form of business, commerce, or any other activity prohibited for a member of the Seimas under the Constitution).

The prohibition precluding a member of the Seimas from engaging in business, commerce, or other profit-making activity (Paragraph 1 of Article 60 of the Constitution): the right of a member of the Seimas to be a founder, owner, co-owner, or shareholder of a private enterprise, establishment, or organisation

The Constitutional Court's decision of 10 February 2005

... none of the statements [of the Constitutional Court's ruling of 1 July 2004, the interpretation of which is requested] indicates that a member of the Seimas is prohibited from being a founder, owner, co-owner, or shareholder of any private enterprise, establishment, or organisation, that such a member of the Seimas, according to the Constitution, cannot have the rights of a founder, owner, co-owner, or shareholder of a private enterprise, establishment, or organisation, that he/she cannot exercise these rights by himself/herself, except for the prohibition imposed on a member of the Seimas and formulated in one of these statements: "such a member of the Seimas who is a founder, owner, co-owner, or shareholder of a private enterprise, establishment, or organisation may not take a position, perform work, hold a position, fulfil other functions, perform other tasks, hold the so-called honorary position, etc. (including participation in collegial management, control, and other bodies) in the said establishment, enterprise, or organisation, or represent it" ...

On the other hand, the aforementioned statements do not deny the duty, deriving from the Constitution, of the legislature to establish effective control over the incompatibility of the duties of a member of the Seimas with other duties or work, as well as the prohibition on receiving other remuneration, save the exceptions established in the Constitution. The Seimas has a certain degree of discretion in establishing such control; the incompatibility of the duties of a member of the Seimas with other duties and work, as well as receiving no other remuneration, save the exceptions established in the Constitution, can be ensured by the Seimas, *inter alia*, by establishing also such a legal regulation by which other persons would be entrusted with the management of the property of a member of the Seimas (after establishing the legal guarantees of the protection and preservation of such property), and by which the transactions of the enterprises of which a member of the Seimas is a founder, owner, co-owner, or shareholder with the establishments, enterprises, organisations, etc. of the public sector would be under control.

In the light of the foregoing arguments, it should be held that the statements ... [of the Constitutional Court's ruling of 1 July 2004] do not mean that a member of the Seimas is prohibited from being a founder, owner, co-owner, or shareholder of any enterprise, establishment, or organisation, that such a member of the Seimas, according to the Constitution, cannot have the rights of a founder, owner, co-owner, or shareholder of a private enterprise, establishment, or organisation, that he/she cannot exercise the rights himself/herself, except for the fact that such a member of the Seimas who is a founder, owner, co-owner, or shareholder of a private enterprise, establishment, or organisation may not take a position, perform work, hold a position, fulfil other functions, perform other tasks, hold the so-called honorary position, etc. (including participation in collegial management, control, and other bodies) in that enterprise, establishment, or organisation or represent it.

The right of a member of the Seimas to take a position in the political party of which he/she is a member (Paragraphs 1 and 3 of Article 60 of the Constitution)

The Constitutional Court's decision of 10 February 2005

... political parties belong to such a type of associations, the aim and purpose of the establishment and activity of which are inseparable from seeking political power, thus, as well as from participating in elections to the representative institution, the Seimas.

The Constitution does not forbid a member of the Seimas from holding various positions (*inter alia*, leading ones) in a political party of which he/she is a member and representing it.

... Paragraph 1 of Article 60 of the Constitution establishes the prohibition precluding a member of the Seimas from taking any other office in state establishments or organisations, also from having another occupation in business, commercial and other private establishments and enterprises, and Paragraph 3 of the same article establishes the prohibition precluding a member of the Seimas from receiving any other remuneration except for the remuneration of a member of the Seimas and remuneration for creative activities.

In this context, it should be noted that, according to the Constitution, a member of the Seimas holding a certain position (*inter alia*, a leading one) in a political party of which he/she is a member cannot be linked with the political party and its structural subdivisions by employment relationships regardless of whether this activity is registered by any legal contract or other legal act, or performed without any legal contract or legal act, and whether this activity is remunerated in any payment or other form or not.

It should also be noted that, under the Constitution, the constitutional prohibition precluding a member of the Seimas from receiving any other remuneration except the remuneration of a member of the Seimas and remuneration for creative activities means that a member of the Seimas who holds a certain position (*inter alia*, a leading one) in the political party of which he/she is a member cannot receive any remuneration for such activity.

In this context, it should be held that ... the content of the notion “remuneration” used in Paragraph 3 of Article 60 of the Constitution is a constitutional notion, it bears constitutional content and it should not be associated exclusively with remuneration paid by employment etc. contracts or agreements; the content of the notion “remuneration” in Paragraph 3 of Article 60 is much broader: this notion comprises monetary payments of various types and the provision of other material benefit to a member of the Seimas.

In the light of the foregoing arguments, it should be held that the statements [“The constitutional right to freely form unions is linked with the possibility of holding various positions in such unions; the said possibility is a derivative from the constitutional right to freely form unions. The procedure of holding such positions in associations is established not by the state, but in acts regulating the internal order (articles of association, statutes, etc.) of an association itself (which, according to the Constitution, is autonomous with regard to public authority ...)” and “Under the Constitution, no legal regulation artificially or unreasonably restricting freedom of forming associations and their activity may be established, as the establishment of such a legal regulation would violate the constitutional value – the right to associate (freedom of association). Therefore, under the Constitution, the legislature may not establish any such a legal regulation that would limit the right of a member of the Seimas to be a member of the association specified in the Constitution and to take a position in such an association as, in respect of the said person, this would violate the constitutional value – the right to associate or freedom of association”] of [the Constitutional Court’s ruling of 1 July 2004], as such, do not mean that a member of the Seimas cannot hold a position (*inter alia*, a leading one) in the political party of which he/she is a member and represent such a party.

The right of a member of the Seimas to take office in the trade union or other association of which he/she is a member (Paragraphs 1 and 3 of Article 60 of the Constitution)

The Constitutional Court’s decision of 10 February 2005

... it should be noted that freedom of associations as well as freedom of establishment and activity of trade unions, as consolidated in the Constitution, imply that all such associations can, while following laws, independently regulate their organisational structure, various positions (*inter alia*, leading ones), also the procedure of filling such positions.

The Constitution does not forbid a member of the Seimas from holding various positions (*inter alia*, leading ones) in a trade union or another association of which he/she is a member and which he/she represents.

It should also be stressed that the prohibition established in Paragraph 1 of Article 60 of the Constitution precluding a member of the Seimas from holding any other position in state establishments or organisations, as well as working in business, commercial or other private establishments or enterprises and the prohibition established in Paragraph 3 of the same article precluding a member of the Seimas from

receiving any other remuneration, with the exception of the remuneration as a member of the Seimas and remuneration for creative activities imply that a member of the Seimas who holds a certain position (*inter alia*, a leading one) in a trade union or another association of which he/she is a member, according to the Constitution, may not have an employment relationship with such a trade union, another association, or its structural subdivisions regardless of whether this activity is registered by any legal contract or other legal act, or performed without any legal contract or legal act, regardless of whether or not this activity is remunerated in any payment or other form; in addition, under the Constitution, a member of the Seimas who holds a certain position (*inter alia*, a leading one) in the trade union or another association of which he/she is a member cannot receive any remuneration for such activity.

When interpreting whether a member of the Seimas can represent a trade union or another association of which he/she is a member, it should also be noted that the representation of a trade union or another association by a member of the Seimas bears certain particularities determined by the constitutional legal status of a member of the Seimas as a representative of the Nation; such a legal status differs substantially from the legal status of other citizens or state officials. According to the Constitution, a member of the Seimas cannot represent a trade union or another association in legal relationships with state and municipal establishments, enterprises, or organisations (their officials), as well as with other (non-state or municipal) establishments, enterprises, or organisations (their officials), where laws assign (entrust) such establishments, enterprises, or organisations with the implementation of certain state functions, or where such establishments, enterprises, or organisations, in certain ways and forms established in laws, participate in the implementation of state functions, since the aforementioned establishments, enterprises, or organisations (their officials) are (might be) directly or indirectly dependent on decisions made by the Seimas (including decisions on the allocation of budget appropriations), on parliamentary control exercised by the Seimas, on the possibility for the Seimas to appoint and release the heads of institutions, as well as other state officials, or on the possibility for the Seimas to exert influence on their appointment, etc. Such representation where a certain trade union or another association is represented by a member of the Seimas in legal relationships with state and municipal establishments, enterprises, or organisations (their officials), as well as with other (non-state or municipal) establishments, enterprises, or organisations (their officials), where laws assign (entrust) such establishments, enterprises, or organisations with the implementation of certain state functions, or where such establishments, enterprises, or organisations, in certain ways and forms established in laws, participate in the implementation of state functions, may create the preconditions for such a legal situation where a trade union or another association represented by a member of the Seimas would gain an additional advantage over another subject of these relationships solely due to the fact that such a trade union or another association is represented by a member of the Seimas.

In the light of the foregoing arguments, it should be held that the statements [“The constitutional right to freely form unions is linked with the possibility of holding various positions in such unions; the said possibility is a derivative from the constitutional right to freely form unions. The procedure of holding such positions in associations is established not by the state, but in acts regulating the internal order (articles of association, statutes, etc.) of an association itself (which, according to the Constitution, is autonomous in respect of public authority ...)” and “Under the Constitution, no legal regulation artificially or unreasonably restricting freedom of forming associations and their activity may be established, as the establishment of such a legal regulation would violate the constitutional value – the right to associate (freedom of association). Therefore, under the Constitution, the legislature may not establish any such a legal regulation that would limit the right of a member of the Seimas to be a member of the association specified in the Constitution and to take a position in such an association as, in respect of the said person, this would violate the constitutional value – the right to associate or freedom of association”] of [the Constitutional Court’s ruling of 1 July 2004], as such, do not mean that a member of the Seimas cannot hold a position (*inter alia*, a leading one) in the trade union or other association of which he/she is a member and represent such a trade union or another association.

The incompatibility of the duties of a member of the Seimas with other duties or work (Paragraph 1 of Article 60 of the Constitution): the prohibition on having an employment relationship with any enterprise, organisation, public organisation, trade union, political party, association, or other union

The Constitutional Court's decision of 10 February 2005

... the Constitution prohibits such legal situations where a member of the Seimas has an employment relationship with a certain state or municipal enterprise, establishment, or organisation, or in a private enterprise, establishment, or organisation, or with a certain public organisation, trade union, political party, association, or other union (regardless of its title), with the exception of the work (duties) *expressis verbis* indicated or implicitly provided for in the Constitution.

This constitutional prohibition also means that a person elected as a member of the Seimas must terminate his/her employment relationship with all state or municipal enterprises, establishments, organisations, or with private enterprises, establishments, organisations, or with public organisations, trade unions, political parties, associations, or other unions (regardless of their titles) before the first sitting of the newly elected Seimas during which he/she takes an oath. It was held in [the Constitutional Court's ruling of 1 July 2004] that such "interpretation of the Constitution, whereby, purportedly, a member of the Seimas, having taken an oath, for a certain period of time, may still hold another office or perform other work that is incompatible with the duties of a member of the Seimas (save the exceptions provided for in the Constitution) ... would be unfounded, as the prohibitions established in the Constitution applicable to a member of the Seimas ... would be disregarded; this would be in violation of the Constitution"

Thus, if a member of the Seimas, having taken an oath, did not terminate his/her employment relationship with a certain state or municipal enterprise, establishment, organisation, or with a private enterprise, establishment, organisation, or with a public organisation, trade union, political party, association, or another union (regardless of its title) for some time, this would constitute failure to pay regard to the constitutional prohibitions for a member of the Seimas, i.e. this would mean a violation of the Constitution. The Constitution would also be violated in cases where a member of the Seimas, having taken an oath, did not terminate his/her employment relationship with a certain state or municipal enterprise, establishment, or organisation, or with a private enterprise, establishment, or organisation, or with a public organisation, trade union, political party, association, or another union (regardless of its title), but by the decision of such a state or municipal enterprise, establishment, or organisation, or a private enterprise, establishment, or organisation, or a public organisation, trade union, political party, association, or another union (regardless of its title), or their institution or official, such a member of the Seimas would be granted leave or in any other way he/she would be allowed, on a temporary basis (as long as he/she holds the office of a member of the Seimas), not to perform the respective work, or the exercise of his/her powers (duties) would be suspended, etc. In this context, it should be noted that the fact that a person takes leave, the exercise of his/her powers (duties) is suspended, etc., does not terminate his/her employment relationship with a particular state or municipal enterprise, establishment, or organisation, or a private enterprise, establishment, or organisation, or a public organisation, trade union, political party, association, or another union (regardless of its title), but, on the contrary, confirms that this person has (continues to have) an employment relationship with a particular state or municipal enterprise, establishment, or organisation, a private enterprise, establishment, or organisation, or a public organisation, trade union, political party, association, or another union (regardless of its title).

According to Item 7 of Article 63 of the Constitution, the powers of a member of the Seimas cease when he/she does not give up employment that is incompatible with the duties of a member of the Seimas. If it becomes clear that such a legal situation occurred where a member of the Seimas, having taken an oath, has not resigned from such employment that is incompatible with the duties of a member of the Seimas, under the Constitution, a duty arises for the Seimas to terminate the powers of such a member of the Seimas; the Seimas must adopt a corresponding resolution thereon.

In the light of the foregoing arguments, it should be held that the statements of ... [the Constitutional Court's ruling of 1 July 2004] on the incompatibility of the duties of a member of the Seimas with other

duties and work mean that the Constitution does not allow such a legal situation where a member of the Seimas is a person who has not terminated his/her employment relationship with a certain state or municipal enterprise, establishment, or organisation, or with a private enterprise, establishment, organisation, or with a certain public organisation, trade union, political party, association, or another union (regardless of its title), but takes leave or in any other way is allowed, on a temporary basis (as long as he/she holds the office of a member of the Seimas), not to perform particular work, not to carry out particular activities, or the exercise of his/her powers (duties) is suspended otherwise in such an enterprise, establishment, or organisation, or in such a public organisation, trade union, political party, association, or another union (regardless of its title).

The prohibition precluding a member of the Seimas from receiving other remuneration (Paragraph 3 of Article 60 of the Constitution)

The Constitutional Court's decision of 10 February 2005

... under the Constitution, the constitutional prohibition precluding a member of the Seimas from receiving any other remuneration except the remuneration of a member of the Seimas and remuneration for creative activities means that a member of the Seimas who holds a certain position (*inter alia*, a leading one) in the political party of which he/she is a member cannot receive any remuneration for such activity.

In this context, it should be held that ... the content of the notion "remuneration" used in Paragraph 3 of Article 60 of the Constitution is a constitutional notion, it bears constitutional content and it should not be associated exclusively with remuneration paid by employment etc. contracts or agreements; the content of the notion "remuneration" in Paragraph 3 of Article 60 is much broader: this notion comprises monetary payments of various types and the provision of other material benefit to a member of the Seimas.

The individuality of the mandate of a member of the Seimas

The Constitutional Court's conclusion of 27 October 2010

... under the Constitution, the mandate of a member of the Seimas is individual, i.e. it is conferred only on a person who, under the procedure established in the Constitution and laws, is elected as a member of the Seimas. Under the Constitution, a member of the Seimas has the right and duty to implement the mandate conferred on him/her by the electorate only by himself/herself in person. The constitutional status of a member of the Seimas, which integrates the duties, rights, the guarantees of the activity, and the responsibility of a member of the Seimas, implies that a member of the Seimas is obliged to implement the rights and duties of a member of the Seimas, a representative of the Nation, which arise from the Constitution and laws not in conflict with the Constitution, only by himself in person, and that he/she may not, in any form, transfer to another person, *inter alia*, a member of the Seimas, the performance of his/her, as a member of the Seimas, rights and constitutional duties. The individuality of the mandate of a member of the Seimas also implies that no person, *inter alia*, a member of the Seimas, may take over the rights and duties of another member of the Seimas, a representative of the Nation, *inter alia*, the right to vote.

The principle of the free mandate of a member of the Seimas, which is consolidated in the Constitution, *inter alia*, the requirement for the individuality of the mandate of a member of the Seimas, gives rise to the right of a member of the Seimas to vote at his/her own discretion in the course of the adoption of any decision of the Seimas; the said right may be realised only by the expression of the will of a member of the Seimas in person in the course of voting at a sitting of the Seimas. In cases where the requirement for voting by a member of the Seimas in person at a sitting of the Seimas is not observed, *inter alia*, where, in the course of voting, a certain member of the Seimas votes instead of another member of the Seimas and thereby expresses the will of not that member of the Seimas instead of whom a vote is cast, but his/her own, no regard is paid to the requirements for the procedure of the adoption of laws, which stem from the Constitution, *inter alia*, Article 69 thereof, the results of the voting are distorted, as well as the preconditions are created for the violation of the principle of the free mandate of a member of the Seimas, which is consolidated in the Constitution. It also needs to be noted that such cases where a certain member

of the Seimas votes instead of another member of the Seimas and thereby expresses the will of that member of the Seimas also do not conform to the requirement for the individuality of the mandate of a member of the Seimas and should be treated as disregard of the requirements for the procedure of the adoption of laws, which stem from the Constitution, *inter alia*, Article 69 thereof.

Under the Constitution, the legislature has the duty to establish, by means of legal acts, such a legal regulation that would ensure that the members of the Seimas who take part in the implementation of the functions of the Seimas, as the representation of the Nation, would properly perform their powers, that no legal preconditions would be created for the members of the Seimas to act not in the interests of the Nation and the State of Lithuania, but in their personal interests, by raising these personal interests above the public interests, that no legal preconditions would be created for the members of the Seimas to act in bad faith and abuse their powers, that would make it possible to exercise effective control over how members of the Seimas observe these requirements, and that the members of the Seimas, in cases where they disregard the aforementioned requirements, would be held liable in accordance with the Constitution and laws.

The constitutional concept of the duties and work that are incompatible with the duties of a member of the Seimas (Paragraph 1 of Article 60 of the Constitution)

The Constitutional Court's decision of 23 February 2011

While interpreting whether the phrase “the notion ‘work’ used in the expression ‘work in business, commercial, or other private establishments or enterprises’ of Paragraph 1 of Article 60 of the Constitution” ... of the Constitutional Court’s ruling of 1 July 2004 ... also comprises any private activity of a member of the Seimas that is carried out in business, commercial and other private establishments or enterprises under a legal contract or any other type of contract, though, in the time free from sittings of the Seimas and without receiving, for that activity, any remuneration or any other types of monetary payments, it needs to be noted that ... under the official constitutional doctrine formulated in the Constitutional Court’s ruling of 1 July 2004, the notion “work” used in the expression “work in business, commercial, or other private establishments or enterprises” of Paragraph 1 of Article 60 of the Constitution comprises any activity in a Lithuanian, foreign, or international private establishment, enterprise, or organisation, or the representation of such an establishment, enterprise, or organisation if the said activity is linked with performing work, taking a position, holding a position, fulfilling other functions, performing other tasks, holding the so-called honorary position, etc. (including participation in collegial management, control, and other bodies), irrespective of whether:

- this activity is permanent, temporary, or one-off (episodic);
- this activity is remunerated in any payment or other form, or is not remunerated;
- this activity is referred to in legal acts as work or otherwise;
- there are any other persons engaged in a certain activity in this establishment, enterprise, or organisation;
- this activity means that it is carried out by a person holding a leading position;
- a person is elected or appointed in order to carry out such activity;
- the activity is registered under a certain legal contract or another legal act, or is performed without any legal contract or legal act.

It also needs to be noted that, as it was emphasised in the Constitutional Court’s decision of 10 February 2005, under the Constitution, during a rest period, at leisure time, or during annual paid leave a member of the Seimas does not lose his/her status of a representative of the Nation.

Thus, it should be held that Paragraph 1 of Article 60 of the Constitution contains the prohibition precluding a member of the Seimas from working in business, commercial, or other private establishments or enterprises not only during his/her work at the Seimas or his/her other parliamentary activities, but also during the time free from work at the Seimas (during a rest period, at leisure time, or during annual paid leave).

At the same time, it needs to be emphasised that ... the purpose of the legal regulation established in Paragraph 1 of Article 60 of the Constitution is to ensure the free mandate of a member of the Seimas as a

representative of the Nation, the continuity of his/her work at the Seimas and his/her other parliamentary activities, to guarantee that a member of the Seimas acts in the interests of the Nation and the State of Lithuania, but not in his/her personal or group interests, or in the interests of the political parties or political organisation, the public or other organisations, other persons, or the territorial communities that nominated or supported the said person as a candidate for the office of a member of the Seimas, or in the interests of the voters of the constituency in which the said member of the Seimas was elected, that a member of the Seimas will not use his/her status and a free mandate for his/her private benefit, or for the benefit of his/her close relatives or other persons, that each member of the Seimas will have the opportunity to perform his/her constitutional duty to continuously participate at the work of the Seimas, the representation of the Nation, to continuously exercise as a representative of the Nation his/her constitutional powers; this purpose would never be reached or the preconditions precluding the accomplishment of this purpose would be created if a member of the Seimas also had the possibility of holding another office or another occupation, with the exception of the office *expressis verbis* specified in the Constitution or the duties allowed under the Constitution.

In view of the foregoing arguments, the conclusion should be drawn that the phrase “the notion ‘work’ used in the expression ‘work in business, commercial, or other private establishments or enterprises’ of Paragraph 1 of Article 60 of the Constitution” ... of the Constitutional Court’s ruling of 1 July 2004 comprises any activity in a Lithuanian, foreign, or international private establishment, enterprise, or organisation, or the representation of such an establishment, enterprise, or organisation if the said activity is linked with performing work, taking a position, holding a position, fulfilling other functions, performing other tasks, holding the so-called honorary position, etc. (including participation in collegial management, control, and other bodies), irrespective of whether this activity is permanent, temporary, or one-off (episodic), whether this activity is remunerated in any payment or other form, or is not remunerated, whether this activity is referred to in legal acts as work or otherwise, whether there are any other persons engaged in a certain activity in this establishment, enterprise, or organisation, whether this activity means that it is carried out by a person holding a leading position, whether a person is elected or appointed in order to carry out such activity, whether the activity is registered under a certain legal contract or another legal act, or is performed without any legal contract or legal act, irrespective of the fact whether this activity is carried out during the work of a member of the Seimas at the Seimas or his/her other parliamentary activities, or during a rest period, at leisure time, or during annual paid leave.

The right of a member of the Seimas to receive remuneration for creative activities (Paragraph 3 of Article 60 of the Constitution)

The Constitutional Court’s decision of 23 February 2011

... the expression “one of specific features of freedom of the creative activities of a member of the Seimas is that a member of the Seimas exercises this freedom not in the capacity of a subject of employment, state service, or similar relations” ... of the Constitutional Court’s ruling of 1 July 2004, when interpreted in the context of the constitutional legal status of a member of the Seimas, the constitutional concept of creative activities as well as remunerating for such activities, means that, under the Constitution, a member of the Seimas may receive remuneration for creative activities, i.e. for such activities that result in qualitatively new, original and specific material or spiritual values of science, technology, culture, or art (piece of creation), which have never existed before. In addition, the creative activities of a member of the Seimas are incompatible with any activity (taking a position, performing work, holding a position, fulfilling other functions, etc.) in a Lithuanian state or municipal, foreign, or international establishment, enterprise, or organisation, or in a private establishment, enterprise, or organisation; thus, a member of the Seimas, while engaging in creative activities, may not violate the constitutional imperatives of limitations imposed on work activities of a member of the Seimas, which arise from the Constitution, *inter alia*, Paragraph 1 of Article 60 thereof.

Constitutional freedom of the creative activities of a member of the Seimas may be exercised, *inter alia*, by concluding a contract; however, it needs to be noted that no employment relationship, state service relationship, or similar relationship may arise on the basis of such a contract. It also needs to be noted that, when deciding on the type of relationships that have emerged between the contracting parties under a specific contract, not only the title of a contract, but also the content thereof must be assessed. Consequently, in each case it is necessary to individually assess whether such a contract is used to regulate the relationships corresponding to the constitutional concept of creative activities.

Thus, it needs to be held that a member of the Seimas may receive remuneration for creative activities, i.e. for such activities that result in qualitatively new, original and specific material or spiritual values of science, technology, culture, or art (piece of creation), which have never existed before; however, as mentioned before, the creative activities of a member of the Seimas are incompatible with any activity (taking a position, performing work, holding a position, fulfilling other functions, etc.) in a Lithuanian state or municipal, foreign, or international establishment, enterprise, or organisation, or in a private establishment, enterprise, or organisation; thus, a member of the Seimas, while engaging in creative activities, may not violate the constitutional imperatives of limitations imposed on work activities of a member of the Seimas, which arise from the Constitution, *inter alia*, Paragraph 1 of Article 60 thereof.

At the same time, it needs to be noted that, as mentioned before, a member of the Seimas, while exercising his/her freedom of creative activities, must pay regard to the constitutional status of a member of the Seimas as a representative of the Nation, and the legal and ethical imperatives arising therefrom, *inter alia*, he/she must avoid a conflict between public and private interests.

In view of the foregoing arguments, the conclusion should be drawn that the expression “one of specific features of freedom of the creative activities of a member of the Seimas is that a member of the Seimas exercises this freedom not in the capacity of a subject of employment, state service, or similar relationships” ... of the Constitutional Court’s ruling of 1 July 2004 means, *inter alia*, that a member of the Seimas may receive remuneration for creative activities, i.e. for such activities that result in qualitatively new, original and specific material or spiritual values of science, technology, culture, or art (piece of creation), which have never existed before; constitutional freedom of the creative activities of a member of the Seimas may be exercised, *inter alia*, by concluding a contract; however, no employment relationship, state service relationship, or similar relationship may arise on the basis of such a contract. Consequently, a member of the Seimas, while engaging in creative activities, may not violate the constitutional imperatives of limitations imposed on work activities of a member of the Seimas, which arise from the Constitution, *inter alia*, Paragraph 1 of Article 60 thereof.

[...]

... a lecture, as a rule, is a form of educational activities. Lectures are aimed at imparting knowledge on the subject taught as well as at elucidating topical questions relating to that subject. Nevertheless, situations are possible where a lecture, due to its notable originality and qualitative novelty, has no analogues anywhere and may be treated as a piece of creation, the form of expression whereof, *inter alia*, can be written or verbal one.

Under the Constitution, a member of the Seimas may receive remuneration for creative activities, i.e. for such activities in the area of science, technology, culture, or art that are aimed at creating a particular piece of creation, i.e. qualitatively new, original and specific material or spiritual values of science, technology, culture, or art, which have never existed before. It needs to be noted that, as mentioned before, one of the specific features of freedom of the creative activities of a member of the Seimas is that a member of the Seimas exercises this freedom not as a subject of employment, state service, or similar relationships.

Thus, it needs to be held that a member of the Seimas may receive remuneration for a lecture corresponding to the concept of a piece of creation in cases where, in the course of the exercise of his/her freedom of creative activities, a member of the Seimas has created a piece of creation while not being in the position of a subject of employment, state service, or similar relationships.

It has been mentioned that constitutional freedom of the creative activities of a member of the Seimas may be exercised, *inter alia*, by concluding a contract; however, no employment relationship, state service

relationship, or similar relationship may arise on the basis of such a contract. It needs to be noted that a contract may also be concluded in connection with the creative activities of a member of the Seimas that are aimed at creating a lecture; however, no employment relationship, state service relationship, or similar relationship may arise on the basis of such a contract. It also needs to be noted that, when deciding on the type of relationships that have emerged between the contracting parties under a specific contract, not only the title of a contract, but also the content thereof must be assessed. Consequently, in each case it is necessary to individually assess whether such a contract is used to regulate the relationships corresponding to the constitutional concept of creative activities.

In view of the foregoing arguments, the conclusion should be drawn that the statements “It is clear from the phrase ‘payment for educational or creative activities’ in Paragraph 1 of Article 113 of the Constitution that the constitutional concepts of educational and creative activities are not identical and that each of them has its own independent content. These concepts may not be identified with one another, they are not synonyms, and none of them covers the other. Educational activities in the Constitution are separated from creative activities: educational activities are linked with education, teaching, and training at educational and teaching establishments (including higher schools), whereas creative activities ... are activities aimed at creating a piece of science, technology, culture, or art” ... of the Constitutional Court’s ruling of 1 July 2004 mean, *inter alia*, that a member of the Seimas may receive remuneration for a lecture corresponding to the concept of a piece of creation, which has been created while exercising constitutional freedom of creative activities of a member of the Seimas; as regards a lecture corresponding to the concept of a piece of creation, the form of expression whereof, *inter alia*, can be written or verbal one, it is possible to conclude a contract; however, no employment relationship, state service relationship, or similar relationship may arise on the basis of such a contract.

The cessation of the powers of a member of the Seimas when he/she takes up or does not give up employment that is incompatible with the duties of a member of the Seimas (Item 7 of Article 63 of the Constitution)

The Constitutional Court’s decision of 23 February 2011

... Item 7 of Article 63 of the Constitution provides for an independent ground for the loss of the mandate by a member of the Seimas – where a member of the Seimas takes up or does not give up employment that is incompatible with the duties of a member of the Seimas; this implies the necessity to carry out an investigation into the activities of such a member of the Seimas in order to verify the respective circumstances and to establish the fact that the said member of the Seimas has taken up or has not given up the employment incompatible with the duties of a member of the Seimas. Therefore, the legislature must establish such a procedure that would ensure the due process of law, would make it possible to properly investigate and establish whether a certain member of the Seimas has taken (or has not taken) up or has given (or has not given) up the employment incompatible with the duties of a member of the Seimas, and would make it possible to take a fair decision as regards the mandate of the said member of the Seimas.

In view of the foregoing arguments, the conclusion should be drawn that the phrase “According to Item 7 of Article 63 of the Constitution, the powers of a member of the Seimas cease when he/she does not give up employment that is incompatible with the duties of a member of the Seimas” of ... the Constitutional Court’s ruling of 1 July 2004, when interpreted in conjunction with the phrase “The incompatibility of the duties of a member of the Seimas with other duties or work (save the exceptions provided for in the Constitution), as well as the prohibition precluding a member of the Seimas from receiving other remuneration (save the exceptions provided for in the Constitution), as established in the Constitution, gives rise to the duty of the legislature to establish, by means of a law, such a legal regulation that would make it possible to verify whether the limitations imposed in Article 60 of the Constitution on a member of the Seimas are followed” ... of the same ruling, means, *inter alia*, that the legislature must establish such a procedure that would ensure the due process of law, would make it possible to properly investigate and establish whether a certain member of the Seimas has taken (or has not taken) up or has

given (or has not given) up the employment incompatible with the duties of a member of the Seimas, and would make it possible to take a fair decision as regards the mandate of the said member of the Seimas.

The equality of the rights of the members of the Seimas

The Constitutional Court's conclusion of 10 November 2012

... the constitutional status of all members of the Seimas is the same, regardless of whether they were elected while applying a single (either proportional or majoritarian) system of elections or different systems of elections (when the legislature chooses the so-called mixed system of parliamentary elections). As it was held in the Constitutional Court's rulings of 25 January 2001 and 1 July 2004, under the Constitution, each member of the Seimas represents the entire Nation, all the members of the Seimas are equal and they must have the same opportunities to participate in the work of the Seimas.

The cessation of the powers of a member of the Seimas when the election is declared invalid or the law on election is grossly violated (Item 6 of Article 63 of the Constitution)

The Constitutional Court's conclusion of 10 November 2012

... under the Constitution, the gross violations of the principles of democratic, free, and fair elections, *inter alia*, the honesty and transparency of the election process, committed during elections to the Seimas may also be established later, after the elected members of the Seimas have acquired their powers, i.e. after the elected Seimas convenes for its first sitting.

Item 6 of Article 63 of the Constitution prescribes that the powers of a member of the Seimas cease when the election is declared invalid, or the law on election is grossly violated. This constitutional provision implies the powers of the Seimas to discontinue the powers of a member of the Seimas if gross violations of [the principles of] democratic, free and fair elections, which give rise to reasonable doubts regarding the lawfulness of the election of that member of the Seimas, are established after the said member of the Seimas has acquired his/her powers. Under Item 6 of Article 63 of the Constitution, the powers of a member of the Seimas may be terminated both when the election is declared invalid (for example, in a single-member constituency when gross violations (raising reasonable doubts as to the lawfulness of the election of a certain member of the Seimas where it is impossible to establish the election results reflecting the genuine will of the electorate) of the law on election are established, and when the election is not declared invalid (for example, where gross violations of the law on election are established, which raise reasonable doubts as to the lawfulness of the election of certain members of the Seimas in the multi-member constituency or a multi-member constituency, but where it is possible to establish the election results reflecting the genuine will of the electorate).

In this context, it needs to be noted that Item 1 of Paragraph 3 of Article 105 of the Constitution establishes the powers of the Constitutional Court, *inter alia*, to present a conclusion whether there were the violations of election laws during the elections of the members of the Seimas; under Paragraph 5 of Article 106 of the Constitution, the Seimas and the President of the Republic may request that the Constitutional Court present a conclusion in cases concerning an election to the Seimas; Paragraph 3 of Article 107 of the Constitution provides, *inter alia*, that, on the basis of the conclusions of the Constitutional Court, the Seimas takes a final decision on the issues specified in Paragraph 3 of Article 105 of the Constitution. In view of this fact, the conclusion should be drawn that the Seimas may adopt a decision on revoking the powers of a member of the Seimas under Item 6 of Article 63 of the Constitution only on the grounds of the Constitutional Court's conclusion that the election law was grossly violated during the election to the Seimas, while the Constitutional Court may present the said conclusion only following an inquiry by the Seimas or the President of the Republic.

The procedure for abolishing the personal immunity of a member of the Seimas (Paragraphs 1 and 2 of Article 62 of the Constitution)

The Constitutional Court's ruling of 27 April 2016

Paragraphs 1 and 2 of Article 62 of the Constitution prescribe:

“The person of a Member of the Seimas shall be inviolable.

The Members of the Seimas may not be held criminally liable or be detained, or have their liberty restricted otherwise, without the consent of the Seimas.”

The Constitutional Court has held that the system of the guarantees of both the work of a member of the Seimas at the Seimas and other parliamentary activity comprises, *inter alia*, the immunities of a member of the Seimas (ruling of 1 July 2004). The provisions of Paragraphs 1 and 2 of Article 62 of the Constitution consolidate the additional guarantees of the personal immunity of a member of the Seimas, which are necessary and compulsory for the proper performance of the duties of a member of the Seimas, as a representative of the Nation; the immunity of the members of the Seimas, who implement the duties assigned to them under the Constitution and laws, must ensure that the Seimas will be able, without any hindrance, to perform the functions provided for under the Constitution (ruling of 8 May 2000); the right of a member of the Seimas to his/her liberty and his/her personal immunity during the established term of office may be limited only upon the consent of the Seimas (ruling of 25 January 2001).

[...]

... the procedure under which the Seimas may give its consent that is provided for in Paragraph 2 of Article 62 of the Constitution (without such consent a member of the Seimas may not be held criminally liable or be detained, or have his/her liberty restricted otherwise) may be laid down in the Statute of the Seimas. In establishing such a procedure, the Seimas must pay regard to the norms and principles of the Constitution. The procedure (which is established in the Statute of the Seimas) under which the Seimas gives its consent to holding a member of the Seimas criminally liable or to his/her detention, or to restricting his/her liberty otherwise, is binding on the Seimas: while deciding on whether to give such consent, the Seimas must follow the procedure laid down in the Statute of the Seimas. If the Seimas, when implementing its powers to give or not to give such consent, *inter alia*, by adopting a concrete legal act by which the will of the Seimas is expressed, committed a substantial violation of the procedure established in the Statute of the Seimas, not only Paragraph 1 of Article 69 of the Constitution and the constitutional principle of a state under the rule of law, but also Paragraph 2 of Article 62 of the Constitution, which provides that the members of the Seimas may not be held criminally liable or be detained, or have their liberty restricted otherwise, without the consent of the Seimas, would be ignored.

[...]

... in view of the fact that the Seimas by its nature and essence is an institution of a political character, whose decisions reflect the political will of the majority of the members of the Seimas and are based on political agreements and various political compromises (conclusion of 31 March 2004 and the ruling of 27 May 2014), it should be noted that abolishing the personal immunity of a member of the Seimas is a parliamentary procedure, which may not be deemed legal proceedings *sensu stricto*, since, during the said parliamentary procedure, neither the issue of the guilt of a member of the Seimas nor the imposition of a criminal punishment on a member of the Seimas is decided. At the same time, it should be noted that the decision of the Seimas to abolish the personal immunity of a member of the Seimas with a view to holding him/her criminally liable, detaining him/her, or restricting his/her liberty otherwise gives rise to certain legal consequences for such a member of the Seimas and, in certain cases, determines a change in his/her legal status: the member of the Seimas may be held criminally liable or be detained, or may have his/her liberty restricted otherwise following the adoption of the decision to abolish his/her personal immunity.

The additional guarantees of the personal immunity of a member of the Seimas, which are consolidated in the provisions of Paragraphs 1 and 2 of Article 62 of the Constitution and are necessary for the proper performance of his/her duties, are established in order that he/she is protected from persecution on political or other grounds due to his/her activity as a member of the Seimas; this immunity is not granted in order to create the preconditions for a member of the Seimas who is suspected to have committed a crime to escape criminal responsibility. The Seimas, when establishing and following the procedure for abolishing the personal immunity of a member of the Seimas, is also bound by the fact that, by means of crimes, *inter alia*, those of committing which a member of the Seimas is suspected, “The rights and freedoms of

people, as well as the most significant good protected by law” may be grossly violated (ruling of 13 December 1993), as well as by the fact that the striving for an open, just, and harmonious civil society and a state under the rule of law, as consolidated in the Preamble to the Constitution, and the general imperative (expressed in Article 28 of the Constitution) of observing the Constitution and laws means, *inter alia*, that crimes must be prevented, all committed crimes must be solved, and culprits must be brought to justice. Thus, a legal regulation governing the procedure for abolishing the personal immunity of a member of the Seimas must be such that, in the event that there are grounds for holding a member of the Seimas criminally liable, there would be no preconditions for the member of the Seimas to escape criminal responsibility, since, otherwise, the administration of justice would be precluded. Under the Constitution, *inter alia*, Paragraph 2 of Article 1 of Article 62 thereof, and the constitutional principle of a state under the rule of law, the Seimas must establish such a legal regulation governing the procedure for abolishing the personal immunity of a member of the Seimas that would meet the requirements of the due process of law, as, for instance: issues concerning the rights and/or the guarantees of activity of a member of the Seimas must be decided while ensuring his/her right and possibility of defending such rights and guarantees; a member of the Seimas, when the issue of abolishing his/her immunity is decided, must be ensured the right to be heard at least once directly or through a person authorised by him/her. In view of the fact that the consent of the Seimas to holding a member of the Seimas criminally liable, to detaining him/her, or to restricting his/her liberty otherwise opens up the possibility of continuing criminal proceedings, the Seimas, when regulating the procedure for giving such consent, may link the procedure for considering the question of abolishing the immunity of a member of the Seimas with the principles of criminal proceedings (with the requirements determined by such principles).

Requirements for a legal regulation governing the payment of remuneration for the work of a member of the Seimas (*inter alia*, in cases where a member of the Seimas fails to attend the sittings of both the Seimas and its structural subunits)

The Constitutional Court’s ruling (no KT26-N13/2016) of 5 October 2016

... under Paragraph 3 of Article 60 of the Constitution, the work of the members of the Seimas, as well as expenses relating to their parliamentary activities, is remunerated from the state budget. Thus, under Paragraph 4 of Article 60 of the Constitution, the Seimas, while regulating, by means of a law, one of the guarantees of the parliamentary activity of a member of the Seimas – the payment of remuneration for the work of a member of the Seimas – must also pay regard to the imperatives, which arise from the Constitution, concerning the use of the funds of the state budget.

[...]

... the concept of the procedure for the proper possession, use, and disposal of state-owned property, *inter alia*, the funds of the state budget, which is implied by of the Constitution, *inter alia*, by Paragraph 2 of Article 128 thereof, and the constitutional principle of responsible governance give rise to the imperative of ensuring, by means of a law, the reasonable use of the funds of the state budget allocated for the remuneration of the members of the Seimas.

Thus, the Constitution, *inter alia*, Paragraph 3 of Article 60 thereof, and the constitutional principle of responsible governance give rise to the duty of the legislature to comply with the following requirements ... in the course of regulating the payment of remuneration for the work of the members of the Seimas:

- the work of the members of the Seimas, as provided for in Paragraph 3 of Article 60 of the Constitution, is remunerated from the state budget; the main form of this work is participation in the sittings of the Seimas, as well as the sittings of the committees or other structural subunits of the Seimas to which the members of the Seimas are appointed according to the procedure prescribed in the Statute of the Seimas;
- the episodic fulfilment of the constitutional powers (such as drafting laws and other legal acts of the Seimas, meeting with voters, or performing parliamentary activities in other ways) of a member of the Seimas (or continuous fulfilment of such powers only in part) where such a member of the Seimas, without

an important and justifiable reason, denies the constitutional duty of a member of the Seimas to attend the sittings of the committees or other structural subunits of the Seimas to which he/she is appointed according to the procedure prescribed in the Statute of the Seimas, where such sittings, as mentioned before, is the main form of the work of a member of the Seimas, i.e. when such a member of the Seimas is regularly absent from such sittings without an important and justifiable reason, may not be regarded as proper implementation by the member of the Seimas of his/her constitutional duty to represent the Nation, i.e. the duty for the implementation of which the members of the Seimas are remunerated under Paragraph 3 of Article 60 of the Constitution.

In the context of the constitutional justice case at issue, it should also be noted that the legislature, when implementing the duty, which stems from the Constitution, *inter alia*, Paragraph 4 of Article 60 thereof, to regulate, by means of a law, one of the guarantees of the parliamentary activity of a member of the Seimas – the payment of remuneration for the work of a member of the Seimas, *inter alia*, when establishing the amount of such remuneration and the procedure of the payment thereof, must take into consideration the aforementioned constitutional imperatives, which imply the constitutional duty of a member of the Seimas, *inter alia*, to attend the sittings of the Seimas, as well as the sittings of the committees or other structural subunits of the Seimas to which such a member of the Seimas is appointed according to the procedure prescribed in the Statute of the Seimas; the legislature must establish the financial consequences for continuous failure to carry out the said constitutional duty without an important and justifiable reason. The legislature has the discretion to establish various amounts of the reduction of the remuneration of a member of the Seimas (fixed amounts by which the remuneration of the members of the Seimas is reduced), the subject (all the Seimas or its structural subunit) that applies such amounts in accordance with a certain procedure in a specific situation, and various grounds for reducing the remuneration of a member of the Seimas, *inter alia*, in cases where a member of the Seimas without an important and justifiable reason continuously fails to attend the sittings of the Seimas, as well as the sittings of the committees or other structural subunits of the Seimas to which such a member of the Seimas is appointed according to the procedure prescribed in the Statute of the Seimas.

In this context, it should be noted that, when regulating the payment of remuneration for the work of a member of the Seimas in cases where such a member of the Seimas without an important and justifiable reason continuously fails to attend the sittings of the Seimas, as well as the sittings of the committees or other structural subunits of the Seimas to which he/she is appointed according to the procedure prescribed in the Statute of the Seimas, the legislature must also pay attention to the fact that, as it was held in the Constitutional Court's ruling of 25 January 2001, the recognition of parliamentary opposition is a necessary element of pluralistic democracy; the parliament must take into account the principle of the protection of the minority (ruling of 26 November 1993 and 25 January 2001). Therefore, the open non-attendance of the sittings of the Seimas by the members of the Seimas, as well as the sittings of the committees or other structural subunits of the Seimas to which they are appointed according to the procedure prescribed in the Statute of the Seimas, where such non-attendance is based on views and political objectives of the parliamentary opposition, i.e. where such non-attendance constitutes obstruction as a type of political protest and a method of parliamentary activity in an attempt to prevent the adoption of a decision that is not acceptable to the minority, under the Constitution, in certain situations, may be regarded as a rather important reason for not attending such sittings unless such non-attendance is regular.

It should also be noted that the payment of remuneration from the funds of the state budget to such a member of the Seimas who denies the constitutional duty of a member of the Seimas to attend the sittings of the Seimas, or the sittings of the committees or other structural subunits of the Seimas to which he/she is appointed according to the procedure prescribed in the Statute of the Seimas, where such sittings, as mentioned before, is the main form of the work of a member of the Seimas, i.e. when such a member of the Seimas is regularly absent from such sittings without an important and justifiable reason, should be considered a constitutionally unjustified privilege.

The duty of a member of the Seimas to respect the constitutional rights and freedoms of other persons (on harassment as discriminatory conduct degrading human dignity, see 2. The constitutional status of persons, 2.1. General provisions, 2.1.2. The principle of the equality (of the rights) of persons, the conclusion of 19 December 2017)

The Constitutional Court's conclusion of 19 December 2017

... the requirements, arising from the oath of a member of the Seimas and from the constitutional status of a member of the Seimas, to respect and observe the Constitution and laws, to perform the duties of a representative of the Nation in good faith, to act in the interests of the Nation and the State of Lithuania, and to refrain from conduct degrading the reputation and authority of the Seimas – the representation of the Nation also determine the duty to respect the human rights consolidated and protected by the Constitution and not to use the constitutional status of a member of the Seimas as a representative of the Nation in order to violate the constitutional rights and freedoms of other persons.

The constitutional nature of the Seimas as the state authority institution, through which the Nation exercises its supreme sovereign power, and the particularities of the constitutional status of a member of the Seimas as a representative of the Nation (this status ... is different from the legal status of all other citizens) determine the fact that the actions of a member of the Seimas that violate the constitutional rights or freedoms of other persons, especially if they are carried out using the constitutional status of a member of the Seimas, regardless of whether such conduct of the member of the Seimas is related to his/her parliamentary activities, can grossly violate the Constitution and breach the oath of a member of the Seimas, as well as degrade the reputation and authority of the Seimas – the representation of the Nation.

[...]

... due to the nature of harassment, which is discriminatory and degrading human dignity, as well as due to the consequences of harassment, such conduct of a member of the Seimas that may be considered to be harassment inevitably undermines the reputation and authority of the Seimas – the representation of the Nation and discredits state authority irrespective of whether the said conduct of a member of the Seimas is related to his/her parliamentary activities or the use of his/her constitutional status. The conduct of a member of the Seimas that is discriminatory and degrading human dignity and can be regarded as harassment based on gender, *inter alia*, as sexual harassment, should be considered a gross violation of the Constitution, *inter alia*, the provisions of Paragraphs 1, 2, and 3 of Article 21, Paragraphs 1 and 4 of Article 22, and Article 29 thereof, as well as a breach of the oath of a member of the Seimas.

The period of the validity of the oath of a member of the Seimas (Paragraphs 1 and 2 of Article 59 and Article 63 of the Constitution)

The Constitutional Court's conclusion of 22 December 2017

Interpreting the provisions of Paragraphs 1 and 2 of Article 59 and the provisions of Article 63 of the Constitution ... it needs to be noted that the beginning of the exercise of the powers of a member of the Seimas as a representative of the Nation is linked to taking the oath of a member of the Seimas, which is specified in the Constitution: a member of the Seimas acquires all the rights of a representative of the Nation only after he/she has taken the oath; the taken oath binds a member of the Seimas as a representative of the Nation during all the duration of his/her term of powers, i.e. from the moment when he/she, having taken the oath to the Republic of Lithuania under the Constitution in the Seimas, acquires all the rights of a representative of the Nation until the moment when his/her powers as a member of the Seimas cease on any of the grounds set out in Article 63 of the Constitution, *inter alia*, when, after the expiry of the term of powers (incumbency) of the member of the Seimas, the newly elected Seimas convenes for the first sitting (Item 1 of Article 63 of the Constitution). Therefore, under the Constitution, after the cessation of the powers of a member of the Seimas, the oath of the member of the Seimas taken by him/her is no longer binding.

The free mandate of a member of the Seimas (Paragraph 4 of Article 59 of the Constitution)

The Constitutional Court's conclusion of 22 December 2017

... interpreting the constitutional principle of the free mandate of a member of the Seimas in the context of the concept of a pluralistic democracy, which is consolidated in the Constitution, it needs to be noted that, under the Constitution, a member of the Seimas may have and freely express convictions that are different from those of the majority of members of the Seimas; *inter alia*, a member of the Seimas is not obliged to adopt the same concept of state interests that is held by the majority of members of the Seimas. Therefore, under the Constitution, a member of the Seimas, as a representative of the Nation, may communicate with various people, *inter alia*, with people whose views and convictions differ from those held by the majority of members of the Seimas or the majority of members of society. However, in view of the constitutional concept of the free mandate of a member of the Seimas, when communicating with other people, a member of the Seimas, as a representative of the Nation, must follow the interests of the Nation and the State of Lithuania, which are oriented towards the Constitution and the values protected under the Constitution, rather than his/her own interests or the interests of his/her close persons, political parties, organisations, or interest groups, or other personal, private, or group interests, *inter alia*, the interests of another state or persons related to that state that are contrary to the interests of the Republic of Lithuania.

The duty of a member of the Seimas to protect state secrets (other classified information) that become known to a member of the Seimas in the course of performing the duties of a representative of the Nation

The Constitutional Court's conclusion of 22 December 2017

... the constitutionally established oath of a member of the Seimas, as consolidated in Article 5 of the Law on the Procedure for the Entry into Force of the Constitution of the Republic of Lithuania, and the constitutional status of a member of the Seimas, as consolidated, *inter alia*, in Paragraphs 2 and 4 of Article 59 of the Constitution, give rise to the duties of a member of the Seimas, *inter alia*, to be loyal to the Republic of Lithuania, respect and observe the Constitution and laws, conscientiously perform the duties of a representative of the Nation, and act in the interests of the Nation and the State of Lithuania.

These constitutional duties of a member of the Seimas imply, *inter alia*, the duty to protect state secrets that become known to a member of the Seimas in the course of performing his/her duties of a representative of the Nation. ...

Under the Constitution, the state has the duty to guarantee not only the protection of the secrecy of information constituting a state secret, but also the protection of the secrecy of certain other information, in particular that there would be no arbitrary and unlawful attempts to find out or impart such information whose disclosure could inflict damage on the rights and freedoms, as well as legitimate interests, of a person and on other values consolidated, defended, and protected by the Constitution (rulings of 15 May 2007 and 7 July 2011 and the decision of 3 July 2013).

In this context, it should be noted that certain requirements are raised for a person who is granted the right to access information constituting a state secret; such requirements are related to the reliability of a person and his/her loyalty to the State of Lithuania, which should be linked with the trust of the state in that person (rulings of 15 May 2007 and 7 July 2011 and the decision of 3 July 2013); when state institutions decide whether a person has the right to work with or access information that constitutes a state secret (or other classified information), it is necessary to pay regard to the imperative that, in order that a person would have such a right, the state must have unconditional trust in him/her (rulings of 15 May 2007 and 7 July 2011).

Thus ... under the Constitution, the condition of undoubted reliability and loyalty to the State of Lithuania is imposed on those members of the Seimas to whom a state secret can become known in the course of carrying out their duties (such information not to be disclosed and not to be imparted whose disclosure could cause harm to the state, as the common good of the entire society, and the political organisation of the entire society, i.e. could violate the most important relationships regulated, defended, and protected under the Constitution).

As the Constitutional Court has noted on more than one occasion, the distrust by the state of a certain person can be determined by the activities of that person, *inter alia*, by the committed violations of law, as well as by the personal qualities of that person, his/her relationships, and other important circumstances; authorisation to access state secrets may be granted only to such persons whose activities, personal qualities, relationships, etc. cannot give grounds for concerns that, once a state secret becomes known to them, a threat will be posed to, or even damage will be inflicted on, the sovereignty of the state, its territorial integrity, constitutional order, or defence power, or other especially important state interests or the foundations of the life of society and the state, or there will be violations of the most important relationships that are regulated, defended, and protected by the Constitution and whose protection and defence must specifically be facilitated by the fact that certain information is classified in accordance with laws (rulings of 15 May 2007 and 7 July 2011).

Thus ... the reliability and loyalty to the State of Lithuania of the members of the Seimas to whom a state secret can become known when they are carrying out their duties must be assessed in the light of all important circumstances that characterise the person of a member of the Seimas, *inter alia*, his/her activities, professional and personal qualities, reputation, relationships with other persons, as well as the violations of law committed by him/her. It should be noted that one of the most important qualities of a person to whom a state secret can become known in the course of carrying out duties is his/her integrity, which should be assessed, *inter alia*, by providing the state institutions that make a decision on whether the person has the right to work with or access information constituting a state secret (or other classified information) with all information about his/her relationships with other persons with whom communication can affect the protection of state interests, *inter alia*, the protection of state secrets.

... the constitutional duty of a member of the Seimas to protect state secrets, as well as ... requirement, which stems from the oath and constitutional status of a member of the Seimas, that a member of the Seimas must act in good faith, determines the duty of a member of the Seimas to provide, in a fair manner, the state institutions that make a decision on whether the person has the right to work with or access information constituting a state secret (or other classified information) with all the required information, *inter alia*, information about his/her relationships with other persons with whom communication can affect the protection of state interests, *inter alia*, the protection of state secrets. Failure to fulfil this duty can give grounds for doubting the integrity of the member of the Seimas (*inter alia*, in his/her fulfilment of other duties of a representative of the Nation), his/her acting in the interests of the Nation and the State of Lithuania, his/her respect for the Constitution and laws, and thus his/her loyalty to the Republic of Lithuania; the unfair provision of information to the state institutions that make a decision regarding the right to work with or access information constituting a state secret (or other classified information) can also lead to a situation in which a person who is not reliable and loyal to the State of Lithuania will be able to access a state secret and, thereby, pose a threat to the protection of state secrets and, thus, also to the values consolidated and protected by the Constitution.

5.4. THE STRUCTURE OF THE SEIMAS

The structure of the Seimas; political groups in the Seimas

The Constitutional Court's ruling of 26 November 1993

The principles of the equality of the members of the parliament and a free mandate must also be followed in forming the internal structures of parliament. As a rule, structures of two types are formed in parliaments: committees (or commissions) and political groups (or groups of members of the parliament). The former structures are formed on the basis of the specialisation principle of parliamentary activities; this principle ensures the due professional preparation of issues and parliamentary hearing on these issues. The structures of the second group help to realise political orientations and goals of the members of the parliament (not necessarily on the basis of their party membership) as well as to ensure the organised relation of political groups with political parties and organisations represented in parliament.

In determining the internal structure of parliament, the universal principles of its formation must be chosen where such principles would ensure the equal and real opportunities for all the members of the parliament to participate in the formed structural units. Otherwise, not all the members of the parliament would have the opportunity of exercising the additional rights established for the said structural units, which would mean the violation of the principle of the equality of all the members of parliament. Political groups are subunits of the structure of the Seimas; therefore, the establishment of the procedure of their formation, their rights and duties are the prerogative of parliament, determined by its self-dependence within the limits of the Constitution. Though political groups are mostly formed on the basis of party membership, their most essential mission is to ensure the working capacity of the parliament as well as its normal functioning. ... political groups in parliament are formed only by the members of the parliament in accordance with the procedure for their formation that is prescribed by parliament (most frequently, they are formed on the basis of views and political goals), but not by political parties, political organisations, or their coalitions. Though political groups are in close relation with political parties, this does not mean that a political group is a political party in the Seimas or that each party that has its representatives in the Seimas is a political group at the same time. This conclusion is derived from the principle of a free mandate, which is consolidated in the Constitution.

[...]

In determining the procedure of the formation of political groups, the total number of the members of the parliament, the nature of the rights and duties of political groups, as consolidated in the Statute, the necessity to guarantee equal possibilities for all to express views and political goals, the principle of the defence of the minority, minimal requirements for the protection of parliamentary opposition, should be taken into consideration. Furthermore, in cases of forming the governing body of parliament, when committees are set up and their heads are appointed, funds are distributed, and other parliamentary functions are realised, the cases where minor political groups find themselves in a better position than major ones, should be prevented. However, when applying the said criteria, the principle of a free mandate of a parliament member may not be violated. A decision of the parliament whereby the rights of the members of the parliament to participate in the parliamentary process are differentiated violates the rights of a member of the parliament as a representative of the Nation.

[...]

The equality of the members of the Seimas in forming political groups on the basis of views and political goals is an important element of the implementation of the principle of a free mandate. Since a political group (i.e. the members of the parliament who are registered with it) has more opportunities to participate in the activities of the parliament than a member of the Seimas who does not belong to any political group, it must be ensured that all the members of the Seimas have the opportunity freely to choose and form political groups. Seeking to ensure the working capacity and effectiveness of the Seimas, it is important to establish the minimum number of the members of a political group.

It would be possible to guarantee the rights and possibilities of those members of the Seimas who do not register themselves as political groups, where the said rights and possibilities are equal with those of other members of the Seimas and allow the implementation of the rights of a representative of the Nation, by recognising that they are members of a mixed political group and that such a political group has equal rights with other political groups.

Parliamentary opposition

The Constitutional Court's ruling of 25 January 2001

The recognition of parliamentary opposition is a necessary element of pluralistic democracy. The Statute of the Seimas must establish guarantees for opposition activities.

The discretion of the Seimas to establish its own structure; ad hoc investigation commissions of the Seimas

The Constitutional Court's ruling of 13 May 2004

The Seimas consists of representatives of the Nation – 141 members of the Seimas (Paragraph 1 of Article 55 of the Constitution). Legal acts must establish the structure of the Seimas and the procedure of its work in order that the Seimas, the representation of the Nation, would be able to perform its constitutional functions.

Article 76 of the Constitution provides that the structure and procedure of activities of the Seimas are established by the Statute of the Seimas and that the Statute of the Seimas has the force of a law. Under Paragraph 2 of Article 70 of the Constitution, the Statute of the Seimas is signed by the Speaker of the Seimas.

Thus, as the Seimas, under the Constitution, has the discretion to establish its own structure, it also has the discretion to form its structural subunits and the discretion to establish the names of its structural subunits, their competence, composition, interrelations among them, their term of activity, as well as to formulate certain tasks for them. While establishing all this, the Seimas is bound by the norms and principles of the Constitution.

... the Seimas has the constitutional powers to form structural subunits whose term of activities is not defined in advance, i.e. its permanent structural subunits, as well as such structural subunits that are assigned only to solve a certain issue (or certain issues) and cease their activity after they solve the said issue (or issues), i.e. provisional (*ad hoc*) structural subunits.

... as the Seimas has the powers in every case, when it becomes necessary to decide a certain issue falling under the constitutional competence of the Seimas, to seek the exhaustive and objective information needed to adopt particular decisions, it also has discretion to form such its structural subunits that would be assigned to conduct research in order to obtain exhaustive and objective information about the processes taking place in the state and society and about the situation in various areas of the life of the state and society.

The fact that, under the Constitution, the structure of the Seimas and the procedure for its work are established by the Statute of the Seimas, as well as that the Statute of the Seimas is signed by the Speaker of the Seimas, *inter alia*, means that the Seimas, while paying regard to the Constitution, has the right to decide, by itself, the questions of the formation of its structural subunits and those of their competence and organisation of their work, and that no other state institution may interfere with these constitutional powers of the Seimas.

At the same time, it needs to be noted that it is impossible to interpret the provision “The structure and procedure of activities of the Seimas shall be established by the Statute of the Seimas” of Article 76 of the Constitution only linguistically, i.e. as meaning that the powers of the structural subunits of the Seimas may be established only in the Statute of the Seimas. For instance, in order that it could properly perform its constitutional functions, the Seimas may also require to form such its structural subunits that would have the powers in respect of various state or municipal institutions, their officials, or other persons. In the context of the case at issue, it needs to be noted that such powers may also be related to the receipt of information from state or municipal institutions, their officials and other persons about the processes taking place in the state and society, about the situation in various spheres of life of the state and society and arising problems. It needs to be emphasised that the receipt of this information may not be dependent on the fact whether or not particular institutions or other persons are accountable to the Seimas: in order to receive exhaustive and objective information necessary to adopt the respective decisions, the Seimas, as the representation of the Nation, must have an opportunity to receive information not only from institutions, other persons that are accountable to it, but also from persons that are not accountable to it. Where it is necessary to establish the authoritative empowerments of a structural subunit of the Seimas in regard of the institutions, their officials, or other persons that are not accountable to the Seimas (including the right to demand the information the submission whereof is regulated in laws), such powers of the structural subunit of the Seimas must be established by means of a law. In establishing such powers, the norms and principles of the Constitution must be complied with.

It should also be noted that certain questions linked with the formation of the structural subunits of the Seimas, the establishment of their competence, the formation of their composition, or the formulation of

tasks to them may be decided by means of substatory legal acts of the Seimas. Such substatory legal acts of the Seimas may not be in conflict with laws, as well as with the Statute of the Seimas. If a substatory act of the Seimas sets the powers of a structural subunit of the Seimas in regard of state or municipal institutions, their officials, and other persons, the provisions of such a substatory act of the Seimas must be based on the provisions of laws.

It needs to be emphasised that, under the Constitution, the Seimas, having formed a certain structural subunit, having established its powers, having set certain tasks to it, also has the right, in accordance with the procedure established in legal acts, to assess the activities of such its structural subunit and the results of the said activities, irrespective of the fact whether such a structural subunit is permanent or provisional (ad hoc). The Seimas has the discretion to decide on the form of assessing the activities of its structural subunit and the results of such activities. For instance, the Seimas may decide whether or not to give its assent to the activities of its structural subunit or the results of the said activities, or whether to give its assent to such activities only in part (with reservations); the Seimas may state whether a structural subunit formed by it has performed the tasks set to it, or whether it failed to perform them, or whether it performed them only in part, etc.

[...]

Thus, under the Constitution, the Seimas has the right to assess both the activity of an ad hoc investigation commission formed by it and a conclusion made by this commission The Seimas may express its opinion and point of view in various forms as regards a conclusion of an ad hoc investigation commission of the Seimas. For example, the Seimas may decide whether to give its assent or not to give its assent to a conclusion of an ad hoc investigation commission of the Seimas, or to give its assent to such a conclusion in part (with reservations); the Seimas may state that an ad hoc investigation commission formed by it has performed the tasks that have been formulated to it, or that it has not performed them, or that it performed them in part; the Seimas may also state that an ad hoc investigation commission has finished its activity, or may decide to prolong the activities of such a commission, etc. It needs to be noted that a conclusion of an ad hoc investigation commission of the Seimas is not binding on the Seimas.

[...]

It is clear that the Seimas is not an institution of pretrial investigation, or the prosecution service, or a court. Therefore, it needs to be noted that the formulation of the opinion and point of view of the Seimas regarding a conclusion of an ad hoc investigation commission of the Seimas formed by it in a resolution of the Seimas may not be interpreted, under the Constitution, as the legal qualification of the actions that the said ad hoc commission has investigated, or the legal qualification of the decisions adopted by it on the issues that it was assigned to investigate, or the legal qualification of other circumstances that were elucidated by it. The Seimas, after it decides to give or not to give its assent to a conclusion of an ad hoc investigation commission of the Seimas, or to give its assent to such a conclusion in part (with reservations), does not adopt such a decision on the compliance of the said actions, decisions, and circumstances with legal acts that is binding on other state institutions (including the institutions of pretrial investigation, the prosecution service, courts), but it merely formulates its point of view as to a conclusion of the said ad hoc investigation commission. The resolution of the Seimas in which the opinion and point of view of the Seimas are formulated as to a conclusion of the Seimas ad hoc investigation commission that was formed by it is not binding on the institutions of pretrial investigation, the prosecution service, and courts.

The discretion of the Seimas to establish its own structure; the authoritative empowerments of a structural subunit of the Seimas with regard to the institutions, their officials, or other persons that are not accountable to the Seimas must be established by means of a law

The Constitutional Court's ruling of 4 April 2006

In its ruling of 13 May 2004, the Constitutional Court held that, as the Seimas has the powers in every case, when it becomes necessary to decide a certain issue falling under the constitutional competence of the Seimas, to seek the exhaustive and objective information needed to adopt particular decisions, it also has the discretion to form such its structural subunits that would be assigned to conduct research in order

to obtain exhaustive and objective information about the processes taking place in the state and society and about the situation in various areas of the life of the state and society. In the same ruling, the Constitutional Court also held that, as the Seimas, under the Constitution, has the discretion to establish its structure, it also has the discretion to form its structural subunits and the discretion to establish the names of its structural subunits, their competence, composition, interrelations among them, their term of activity, as well as to formulate certain tasks for them; while establishing this, the Seimas is bound by the norms and principles of the Constitution.

Under Article 76 of the Constitution, the structure and procedure of activities of the Seimas are established by the Statute of the Seimas, which has the force of a law. In this context, it should be mentioned that it is impossible to interpret only linguistically the provision that the structure and procedure of activities of the Seimas are established by the Statute of the Seimas, i.e. only as meaning that the powers of the structural subunits of the Seimas may be established only in the Statute of the Seimas; for instance, in order that it could perform its constitutional functions, the Seimas may also require to form such its structural subunits that would have the powers with regard to various state or municipal institutions, their officials, or other persons. Such powers may be related to the receipt of information from state or municipal institutions, their officials, or from other persons about the processes taking place in the state and society, as well as about the situation in various spheres of the life of the state and society and arising problems; the receipt of this information cannot be dependent on the fact whether or not particular institutions or other persons are accountable to the Seimas; where it is necessary to establish the authoritative empowerments of a structural subunit of the Seimas in regard of the institutions, their officials, or other persons that are not accountable to the Seimas (including the right to demand the information the submission whereof is regulated in laws), such powers of the structural subunit of the Seimas must be established by means of a law (ruling of 13 May 2004).

Ad hoc (provisional) investigation commissions of the Seimas (also see 5.2. The functions and powers of the Seimas, 5.2.1. General provisions, the ruling of 4 April 2006 (“The right of the Seimas to receive information that is necessary to exercise its constitutional powers”))

The Constitutional Court’s ruling of 4 April 2006

... in a democratic state under the rule of law, it is not allowed to deny the powers of the parliament – the representation of the Nation – to take measures, *inter alia*, to form the structural subunits of the parliament for this purpose, and to commission them to conduct necessary research in order to receive information about the processes taking place in the state and society, as well as about the situation in various areas of the life of the state and society and arising problems; otherwise, the proper fulfilment of the functions of the parliament – the representation of the Nation – and the adoption of necessary decisions would not be ensured. The said powers arise from the very essence of parliamentary democracy and are one of the features of parliamentarism. In the practice of the parliaments of democratic states under the rule of law, the possibility for parliaments to take measures in order to receive information about processes taking place in the state and society, as well as about the situation in various areas of the life of the state and society and arising problems is also implemented by means of such institutions as ad hoc commissions (which are assigned to conduct certain research) formed by parliaments, parliamentary hearings, deliberations, etc.

The institution of ad hoc commissions formed by the Seimas, *inter alia*, ad hoc investigation commissions, is also characteristic of the parliamentarism tradition of the State of Lithuania.

Under the Constitution, it is not permitted to establish any exhaustive (final) list of questions for the investigation of which the Seimas may form ad hoc investigation commissions: since the Seimas, as the representation of the Nation and the institution of legislation (performing ... not only the legislative but also various other functions), may pass laws and other legal acts regulating most varied social relationships, it can virtually form ad hoc investigation commissions designated for an investigation into most varied processes that take place in the state and society.

The principle of responsible governance is consolidated in the Constitution (rulings of 1 July 2004, 13 December 2004, and 2 June 2005). The Constitution does not imply any such activities of the Seimas where the Seimas collects all information necessary for legislation and other functions of the Seimas by itself, by not relying on the information submitted to it by other state institutions, and where the formation of ad hoc or similar commissions and investigation performed by them prevail in the activities of the Seimas. Quite to the contrary, the Constitution implies the institution of ad hoc investigation commissions of the Seimas and the legal regulation of the formation of such commissions and of their activities where the said ad hoc investigation commissions are formed not in order to investigate any types of questions, but only special questions, i.e. those of state importance. The powers of ad hoc investigation commissions of the Seimas should be related to the constitutional mission and functions of the Seimas.

The Constitution does not imply the possibility of forming any such ad hoc investigation commissions of the Seimas that would be assigned to carry out an investigation into such matters that institutions of public power, under the Constitution, may not investigate at all, as, for example, the circumstances of the private or family life of an individual if such an investigation unreasonably interferes with the private life of an individual, which is defended and protected under the Constitution, if the inviolability of private life is violated, etc.

The constitutional principle of the separation of powers and other provisions of the Constitution make it possible to draw the conclusion that the Seimas has no powers to form any such ad hoc investigation commissions that would be assigned to carry out an investigation into the matters in the course of the investigation of which the powers of other institutions that exercise public power, as well as the powers of other state and municipal institutions provided for in the Constitution and/or laws, would be interfered with. For example, an ad hoc investigation commission of the Seimas cannot take over the constitutional powers of courts or otherwise interfere with the implementation of the constitutional competence of courts, nor may it violate the independence of judges and courts in the administration of justice, let alone administer justice by itself; an ad hoc investigation commission of the Seimas may not take over the constitutional powers of prosecutors or otherwise interfere with the implementation of the constitutional competence of prosecutors, nor may it violate the independence of a prosecutor when he/she organises and directs a pretrial investigation and upholds charges on behalf of the state in criminal cases (ruling of 13 May 2004).

However, the fact that ad hoc investigation commissions of the Seimas may not be assigned to carry out an investigation into the matters in the course of investigation of which the powers of other institutions that exercise public power, as well as the powers of other state and municipal institutions provided for in the Constitution and/or laws, would be interfered with does not mean that ad hoc investigation commissions of the Seimas cannot have any powers with regard to state or municipal institutions, their officials, and other persons at all. Such powers may be established by means of a law and by paying regard to the Constitution.

The formation of ad hoc (provisional) investigation commissions of the Seimas

The Constitutional Court's ruling of 4 April 2006

... the nature of ad hoc investigation commissions of the Seimas as structural subunits of the Seimas implies that an initiative of forming such a commission may arise only in the Seimas, i.e. only members of the Seimas may express it. Thus, under the Constitution, it is not allowed to establish any such a legal regulation whereby the formation of an ad hoc investigation commission of the Seimas is initiated not by the members of the Seimas, but by other subjects.

The Seimas, when regulating, by means of legal acts, the formation of ad hoc investigation commissions of the Seimas, may establish the ways and organisational forms for the members of the Seimas by using which they can express an initiative to form an ad hoc investigation commission of the Seimas; the Seimas may establish, *inter alia*, that such an initiative can be expressed by certain Seimas structural subunits (e.g. political groups, committees) and/or a group of a certain number of the members of the Seimas. ... it should be noted that, in view of the fact that ad hoc investigation commissions of the Seimas can be formed for an investigation into not any, but only special questions, i.e. those of state importance,

the said group of members of the Seimas should be sufficiently large; on the other hand, the establishment of a too large number of the members of the Seimas constituting such a group would groundlessly restrict the possibilities for the members of the Seimas to initiate the formation of ad hoc investigation commissions of the Seimas in order that the Seimas could receive information about processes taking place in the state and society, as well as about the situation in various spheres of life of the state and society and arising problems, where such information is necessary so that the Seimas – the representation of the Nation would effectively act in the interests of the Nation and the State of Lithuania.

Taking account of the fact that the Constitution implies the protection of the parliamentary minority and the minimum requirements of the protection of the Seimas opposition (rulings of 26 November 1993 and 25 January 2001), as well as the fact that the recognition of the parliamentary opposition is a necessary element of pluralist democracy (ruling of 25 January 2001), it is also possible to establish such a legal regulation whereby the Seimas opposition might initiate the formation of ad hoc investigation commissions.

As such, the statement about the initiative to form an ad hoc investigation commission of the Seimas, regardless of who expressed it, does not imply the formation of such a commission. It needs to be emphasised that an ad hoc investigation commission of the Seimas is a subject formed by the entire Seimas, but not by its part, not by a structural subunit of the Seimas or by a group of members of the Seimas; the powers of an ad hoc investigation commission of the Seimas may stem only from an act of the Seimas as the representation of the Nation, i.e. from the expression of the will of the Seimas, but not from the expression of the will or intention of a certain subunit of the Seimas or of a group of members of the Seimas. Due to this, it is only the Seimas that can decide on whether or not to form an ad hoc investigation commission on a certain issue, it is only the Seimas that can establish its composition, tasks, etc. – no one else can express such will for the Seimas, i.e. neither any structural subunit of the Seimas nor any group of members of the Seimas.

The majority principle is among the democratic principles of adopting decisions (ruling of 22 July 1994). The political will of the majority of the members of the Seimas is reflected in decisions adopted by the Seimas (conclusion of 31 March 2004). It needs to be emphasised that, under the Constitution, the will of the Seimas regarding the formation of an ad hoc investigation commission of the Seimas cannot be expressed otherwise than by vote of the members of the Seimas at a sitting of the Seimas and the adoption of the respective substatutory legal act. The Constitutional Court has held that the substatutory acts of the Seimas whereby questions related to the formation of the structural subunits of the Seimas (thus, including ad hoc investigation commissions of the Seimas), their competence, and composition may not be in conflict with laws, as well as with the Statute of the Seimas, and that, if a substatutory act of the Seimas sets the powers of a structural subunit of the Seimas (thus, including an ad hoc investigation commission of the Seimas) with regard to state or municipal institutions, their officials, and other persons, the provisions of such a substatutory act of the Seimas must be based on the provisions of laws (ruling of 13 May 2004).

In each particular case, before deciding on the formation of an ad hoc investigation commission, the Seimas must deliberate and assess whether or not such an ad hoc investigation commission of the Seimas can be formed according to the Constitution and laws. The Seimas must deliberate and assess, *inter alia*, the following: whether the issue due to which the formation of an ad hoc investigation commission of the Seimas is proposed is really of state importance; whether it is proposed that the said ad hoc investigation commission of the Seimas be assigned to carry out an investigation into such matters that the institutions of public power may not investigate at all under the Constitution; whether it is proposed that this ad hoc investigation commission of the Seimas be assigned to carry out an investigation into the matters in the course of investigation of which the powers of other institutions that exercise public power, as well as the powers of other state and municipal institutions provided for in the Constitution and/or laws, would be interfered with.

Before deciding on the formation of an ad hoc investigation commission, the Seimas may also assess (*inter alia*, also from the aspect of expediency) whether there are any circumstances that would justify the

non-forming of such a commission, as, for instance: whether a certain question has already been investigated or whether it is under investigation by an ad hoc investigation commission of the Seimas or by another institution, whether particular work may be performed by a structural subunit of the Seimas, which is already established and is acting, etc.

It needs to be emphasised that the Seimas, when forming an ad hoc investigation commission of the Seimas, must pay regard to the imperative of the protection of the Seimas minority and the minimum requirements of the protection of the Seimas opposition. The said imperative and requirements stem from the Constitution and imply, *inter alia*, that an ad hoc investigation commission of the Seimas may not be formed only from the representatives of the political majority of the Seimas, without including representatives from the minority (opposition) if they so request. It should also be emphasised that in the course of forming an ad hoc investigation commission of the Seimas regard must be paid to the will and interest of the initiators of forming the commission in order to investigate precisely the question formulated by them and it must be ensured that the initiators are properly represented in the ad hoc investigation commission of the Seimas.

[...]

It needs to be noted that in the course of forming ad hoc investigation commissions of the Seimas regard must be paid to the principle of the free mandate of a member of the Seimas, which is consolidated in the Constitution, *inter alia*, in Paragraph 4 of Article 59 thereof. The said principle is one of the guarantees of the independence of the activities of the members of the Seimas and their equal rights. The principle of the free mandate of a member of the Seimas, which is consolidated in the Constitution, gives rise to the right of a member of the Seimas to vote at his/her discretion in the course of adopting any decision of the Seimas, i.e. to vote on each issue according to his/her conscience.

The principle of the free mandate of a member of the Seimas implies that a member of the Seimas, when he/she, together with other members of the Seimas, initiates the formation of an ad hoc investigation commission of the Seimas, participates in the adoption of a resolution of the Seimas on the formation of an ad hoc investigation commission of the Seimas, participates in the activities of such an ad hoc investigation commission of the Seimas, and participates in the adoption of a resolution of the Seimas on the activities of the said ad hoc investigation commission and assessment of the results of its activities, must follow only the Constitution, the interests of the state, as well as his/her own conscience (Paragraph 4 of Article 59 of the Constitution) – such freedom of a member of the Seimas may not be restricted by the mandate of the electorate, or by any political or other demands of the political parties or organisations that nominated him/her, or by the will of other members of the Seimas. It should be mentioned that the members of the Seimas may not be persecuted for their votes or speeches at the Seimas (however, they may be held liable for personal insult or defamation) (Paragraph 3 of Article 62 of the Constitution).

[...]

... in cases where the question for an investigation into which the formation of an ad hoc investigation commission of the Seimas is proposed is really of state importance and there are not any circumstances due to which such a commission may not be formed under the Constitution and laws, and if there are no other circumstances that would justify the non-forming of such a commission, the free mandate of the members of the Seimas must be used in such a way that would make it possible for the Seimas to act effectively in the interests of the Nation and the State of Lithuania and to perform properly its constitutional obligation.

... the principle of responsible governance is consolidated in the Constitution. The Seimas should not use its constitutional powers to form ad hoc investigation commissions in such a way whereby the Seimas would itself collect all information necessary for legislation and performance of its other functions and whereby the formation of ad hoc investigation or similar commissions and investigation conducted by them would prevail in the activities of the Seimas; as mentioned above in this ruling of the Constitutional Court, the Constitution does not imply any such activity of the Seimas. Otherwise, the preconditions might be created where certain circumstances would hinder the work of the parliament, would hinder the Seimas, the representation of the Nation, to act rationally and effectively in the interests of the Nation and the State of Lithuania.

It needs to be noted that, under the Constitution, each decision of the Seimas on forming an ad hoc investigation commission (decision on forming such a commission, a decision on non-forming such a commission, etc.), regardless of its expression (legal form), can be impugned before the Constitutional Court with regard to the compliance of this decision (act of the Seimas) with higher-ranking legal acts, *inter alia* (and, first of all), with the Constitution. Under the Constitution, the subjects specified in Paragraph 1 of Article 106 of the Constitution, *inter alia*, not less than 1/5 of all the members of the Seimas, i.e. a group of not less than 29 members of the Seimas, can do so.

The legal force of a conclusion given by an ad hoc (provisional) investigation commission of the Seimas

The Constitutional Court's ruling of 4 April 2006

... a conclusion of an ad hoc investigation commission of the Seimas is not binding on the Seimas. Under the Constitution, the Seimas, having formed an ad hoc investigation commission and having set certain tasks to it, also has the power to assess, according to the procedure established in legal acts, the activities of such an ad hoc investigation commission and the results of such activities. The Seimas has discretion to decide on the form of assessing the activities of its ad hoc investigation commission and the results of such activities. For instance, the Seimas may decide whether or not to give its assent to the activities of its ad hoc investigation commission or the results of the said activities, or whether to give its assent to such activities only in part (with reservations); the Seimas may state whether an ad hoc investigation commission formed by it has performed the tasks set to it, or whether it failed to perform them, or whether it performed them only in part, etc. (ruling of 13 May 2004).

The Seimas, after it decides to give its assent to a conclusion of an ad hoc investigation commission formed by it, does not adopt such a decision on the compliance of the investigated actions, decisions, and circumstances with legal acts that is binding on other state institutions (including institutions of pretrial investigation, the prosecution service, courts), but it merely formulates its point of view as to a conclusion of the said ad hoc investigation commission. As such, a conclusion (its individual statements) of an ad hoc investigation commission of the Seimas does not directly give rise to any legal effects for the persons indicated in it. Only decisions of other institutions and their officials, where such decisions may be adopted in view of a conclusion of an ad hoc investigation commission of the Seimas, may give rise to such legal effects (ruling of 13 May 2004).

The powers of ad hoc (provisional) investigation commissions of the Seimas

The Constitutional Court's decision of 21 November 2006

... the provisions of the Constitution imply broad powers of ad hoc investigation commissions of the Seimas; however, they also consolidate the limits on the investigation activity of ad hoc investigation commissions of the Seimas; the said limits may not be expanded by means of laws or other legal acts.

The Constitution demands, in an imperative manner, the establishment of such a legal regulation – first of all, legislative regulation – that, on the one hand, would ensure the activity of ad hoc investigation commissions of the Seimas that are assigned by the Seimas, the representation of the Nation, to conduct an investigation in order to collect information about certain processes taking place in the state and society, about the situation in various spheres of the life of the state and society and arising problems, and would, thus, also ensure the performance of the control function by the Seimas (parliamentary control) and, consequently, would ensure that there are no spheres in the life of the state in which the Seimas, the representation of the Nation, is prevented from exercising, by paying regard to the Constitution, parliamentary control (provided there is a special matter (of state importance)), and, on the other hand, would ensure that no harm would be inflicted on any values consolidated, defended, and protected by the Constitution if ad hoc investigation commissions of the Seimas are formed for an investigation into such matters that, under the Constitution, cannot be investigated by institutions of public power at all (for instance, the circumstances of the private or family life of an individual if such an investigation unreasonably, from the constitutional point of view, interferes with the private life of an individual, which

is defended and protected under the Constitution, if the inviolability of private life is violated, etc.), or any such matters in the course of the investigation of which the powers of other state and municipal institutions (their officials) (*inter alia*, the powers of courts and prosecutors), which are provided for in the Constitution, would be interfered with. The legal regulation established in laws and other legal acts must be such that would ensure a rational balance between these two imperatives, which arise from the Constitution, and would ensure that none of the said imperatives would be ignored or sacrificed for another.

[...]

... as it was held in the Constitutional Court's ruling of 4 April 2006, under the Constitution, it is not permitted to establish any exhaustive (final) list of questions for the investigation of which the Seimas may form ad hoc investigation commissions; the Seimas, as the representation of the Nation, can virtually form ad hoc investigation commissions designated for an investigation into most varied processes that take place in the state and society.

At the same time, it needs to be noted that ad hoc investigation commissions of the Seimas can be formed for an investigation into not any, but only special questions, i.e. those of state importance (rulings of 13 May 2004 and 4 April 2006).

Thus, in general, provided there is a special matter (of state importance), the Constitution does not prohibit the Seimas from forming also such ad hoc investigation commissions that would be assigned to carry out an investigation into the activity of state or municipal institutions, i.e. into how the particular state or municipal institutions perform their functions defined in the Constitution and laws, and into how they implement the powers established in the Constitution and laws. In order to carry out such a task set by the Seimas, an ad hoc investigation commission of the Seimas also must have the possibility of receiving, under the procedure established in laws, information that is related to the organisation of work in the respective state or municipal institutions, irrespective of whether the decision on certain questions regarding, *inter alia*, the establishment of the structure of institutions, the establishment and liquidation of structural subunits, the appointment of employees to work, their release from office, their transfer to another position, their removal from duties, and other issues related to the career, legal status, etc. of the employees of institutions, falls, according to laws, within the competence of the heads of such institutions or whether other persons also take part in the adoption of such decisions. However, it needs to be emphasised that ad hoc investigation commissions of the Seimas may not be formed for the elucidation of only such specific questions as those mentioned above: an investigation into such questions may not be an objective in itself. The receipt of factual information about such matters may only serve as a means to elucidate special questions (of state importance).

Thus, both from the point of view of lawfulness and/or expediency, ad hoc investigation commissions of the Seimas may not be assigned to carry out an investigation and assessment of or exercise control over the decisions of the heads of state and municipal institutions as regards the professional career of persons who work in the respective institutions, since only the state and municipal institutions (their officials) that have the necessary powers may conduct such an investigation, assessment, and control and may adopt the respective decisions.

Ad hoc investigation commissions of the Seimas may be assigned to carry out an investigation and assessment of the decisions of the heads of state and municipal institutions, *inter alia*, as regards the structure of the respective institutions; however, such investigation and assessment must be conducted insofar as it is necessary in order to elucidate whether these decisions are such that the respective state or municipal institutions can properly perform their functions defined in the Constitution and laws and that they can implement the powers established for them in the Constitution and laws.

In this context, it needs to be noted that, as it was held in this decision of the Constitutional Court, under the Constitution, the control function carried out by the Seimas does not imply that the Seimas directly organises the work of other state or municipal institutions or may, at any time, interfere with the activity of any state or municipal institutions (their officials) that implement public power. The control function carried out by the Seimas also does not imply that the Seimas has the opportunity to adopt such

decisions that can be adopted only by the state institutions (their officials) that have the respective competence.

No subunit of the Seimas, including ad hoc investigation commissions of the Seimas, may have any such powers.

It also needs to be noted that, as it was held in the Constitutional Court's ruling of 13 May 2004, "in order that it could properly perform its constitutional functions, the Seimas may also require to form such its structural subunits that would have the powers with regard to various state or municipal institutions, their officials, or other persons"; "such powers may also be related to the receipt of information from state or municipal institutions, their officials, or from other persons about the processes taking place in the state and society, about the situation in various spheres of the life of the state and society and arising problems"; "the receipt of this information may not be dependent on the fact whether or not particular institutions or other persons are accountable to the Seimas: in order to receive exhaustive and objective information necessary to adopt the respective decisions, the Seimas, as the representation of the Nation, must have the possibility of receiving information not only from institutions and other persons that are accountable to it, but also from persons that are not accountable to it"; "where it is necessary to establish the authoritative empowerments of a structural subunit of the Seimas in respect of the institutions, their officials, or other persons that are not accountable to the Seimas (including the right to demand the information the submission whereof is regulated in laws), such powers of the structural subunit of the Seimas must be established by means of a law"; "in establishing such powers, the norms and principles of the Constitution must be complied with".

It was also held in the Constitutional Court's ruling of 4 April 2006 that "the fact that ad hoc investigation commissions of the Seimas may not be assigned to carry out an investigation into the matters in the course of investigation of which the powers of other institutions that exercise public power, as well as the powers of other state and municipal institutions provided for in the Constitution and/or laws, would be interfered with does not mean that ad hoc investigation commissions of the Seimas cannot have any powers in respect of state or municipal institutions, their officials, and other persons at all"; "such powers may be established by means of a law and by paying regard to the Constitution".

The phrases "such powers of the structural subunit of the Seimas must be established by means of a law" and "such powers may be established by means of a law and by paying regard to the Constitution" used herein also mean that laws must *expressis verbis*, clearly and unambiguously, establish what authoritative empowerments an ad hoc commission of the Seimas has in respect of the institutions, their officials, or other persons who are not accountable to the Seimas. In establishing such powers, regard must be paid to the norms and principles of the Constitution, *inter alia*, to the official doctrinal provisions formulated in the Constitutional Court's acts in which the relevant provisions of the Constitution are interpreted.

It needs to be noted that the work of ad hoc investigation commissions of the Seimas must be regulated in order to receive the necessary information and to arrange the interrogation of the persons summoned to the sittings of ad hoc investigation commissions of the Seimas so that a preconceived opinion would not be formed by questions or comments presented by the members of that commission, that human dignity would not be degraded, that the right of a person to private life would not be violated, that only such questions or comments that are connected with the matter under investigation would be presented, and that questions would not be imaginary or provocative. In addition, if ad hoc investigation commissions of the Seimas receive such information the non-disclosure of which is defended and protected under the Constitution, it must be ensured that the said information is not made public or disclosed to the persons who, under the Constitution and laws, have no right to receive such information, since such disclosure would inflict damage on the values consolidated, defended, and protected under the Constitution.

In the light of the foregoing arguments ... it should be held that ... the provision "The constitutional principle of the separation of powers and other provisions of the Constitution make it possible to draw the conclusion that the Seimas has no powers to form any such ad hoc investigation commissions that would be assigned to carry out an investigation into the matters in the course of the investigation of which the

powers of other institutions that exercise public power, as well as the powers of other state and municipal institutions provided for in the Constitution and/or laws, would be interfered with” ... of the Constitutional Court’s ruling of 4 April 2006 ... when it is interpreted in the context of the official constitutional doctrinal provisions of the Constitutional Court’s ruling of 4 April 2006 and of the Constitutional Court’s ruling of 13 May 2004, also means that:

- under the Constitution, the Seimas has the powers, provided there is a special matter (of state importance), also to form such ad hoc investigation commissions that would be assigned to carry out an investigation into the activity of state or municipal institutions, i.e. into how particular state or municipal institutions perform their functions defined in the Constitution and laws and into how they implement the powers established in the Constitution and laws; in order to carry out such a task set by the Seimas, an ad hoc investigation commission of the Seimas also must have the possibility of receiving, under the procedure established in laws, the information that is related to the organisation of work in particular state or municipal institutions, irrespective of whether the decision on certain questions regarding, *inter alia*, the establishment of the structure of institutions, the establishment and liquidation of structural subunits, the appointment of employees to work, their release from office, their transfer to another position, their removal from duties, and other issues related to the career, legal status, etc. of the employees of institutions, falls, according to laws, within the competence of the heads of such institutions or whether other persons also take part in the adoption of such decisions; however, ad hoc investigation commissions of the Seimas cannot be formed for the elucidation of only such specific questions as those mentioned above: the receipt of factual information about such matters may only serve as a means to elucidate special questions (of state importance);

- both from the point of view of lawfulness and/or expediency, ad hoc investigation commissions of the Seimas may not be assigned to carry out an investigation and assessment of or to exercise control over the decisions of the heads of state and municipal institutions as regards the professional career of persons who work in the respective institutions, since only the state and municipal institutions (their officials) that have the necessary powers may conduct such an investigation, assessment, and control and may adopt the respective decisions;

- ad hoc investigation commissions of the Seimas may be assigned to carry out an investigation and assessment of the decisions of the heads of state and municipal institutions, *inter alia*, as regards the structure of the respective institutions; however, such an investigation and assessment must be conducted insofar as it is necessary in order to elucidate whether these decisions are such that the respective state or municipal institutions can properly perform their functions defined in the Constitution and laws and that they can implement the powers established for them in the Constitution and laws;

- if ad hoc investigation commissions of the Seimas receive such information the non-disclosure of which is defended and protected under the Constitution, it must be ensured that the said information is not made public or disclosed to the persons who, under the Constitution and laws, have no right to receive such information, since such disclosure would inflict damage on the values consolidated, defended, and protected under the Constitution;

- it is not permitted that the legal regulation governing the activities of ad hoc investigation commissions of the Seimas would create the preconditions where an ad hoc investigation commission of the Seimas or the Seimas itself directly organises the work of other state or municipal institutions or interferes with the activity of state or municipal institutions (their officials), or adopts such decisions that can be adopted only by the state institutions (their officials) that have the respective competence.

The relationships of ad hoc (provisional) investigation commissions of the Seimas with prosecutors and the state institutions that conduct pretrial investigation and/or are the subjects of operational activities; the submission of information the non-disclosure of which is defended and protected under the Constitution to ad hoc (provisional) investigation commissions of the Seimas

The Constitutional Court’s decision of 21 November 2006

... the official constitutional doctrinal provisions ... of the Constitutional Court's ruling of 13 May 2004 regarding the relationships of ad hoc investigation commissions of the Seimas with the Prosecution Service of the Republic of Lithuania (with prosecutors) ... are also *mutatis mutandis* applicable to the legal regulation of relationships between ad hoc investigation commissions of the Seimas and other state institutions (their officials) that, according to laws, conduct pretrial investigation and/or are the subjects of operational activities.

The Constitution requires that the legislature pass a law laying down the legal regulation ensuring that the information the non-disclosure (complete or partial) of which is protected and defended under the Constitution, *inter alia*, such information that constitutes a secret protected and defended under the Constitution, would be submitted to an ad hoc investigation commission of the Seimas (which is formed not in order to investigate the matters that an ad hoc investigation commission of the Seimas may not investigate, or the matters in the course of the investigation of which the powers of other institutions that exercise public power, as well as the powers of other state and municipal institutions provided for in the Constitution and/or laws, would be interfered with), provided such information may be submitted to such a commission on the whole, only by following, in the strictest manner, the procedure established in laws and by guaranteeing most strictly that this information will not be disclosed to any person who, under the Constitution and laws, does not have the right to receive such information, since such disclosure of the said information would inflict damage on the values consolidated, defended, and protected under the Constitution.

It is clear that submitting any information to the Seimas, which is a political institution (which is composed of persons belonging to various political forces) is always connected with the risk that this information might spread wider than it should under the Constitution and laws.

The legislative consolidation of the legal regulation that effectively guarantees the non-disclosure of the secrets defended and protected under the Constitution and the relevant organisational and technical means are the necessary conditions for submitting information to ad hoc investigation commissions of the Seimas (provided such information may be submitted to an ad hoc investigation commission of the Seimas on the whole).

[...]

It should also be noted that, as held in the Constitutional Court's ruling of 13 May 2004, [the law] "does not provide for any criteria on the basis of which the Office of the Prosecutor General, the National Audit Office, the State Security Department or a pretrial investigation institution might object to submitting the necessary information to an ad hoc investigation commission of the Seimas, or on the basis of which certain limitations could be applied to the use of this information in the work of the said commission".

However, it needs to be specially emphasised that the said legal regulation may not be amended or specified in such a way that would create the preconditions for raising one constitutional value – the control function of the Seimas, which is consolidated in the Constitution, and its constitutional powers to take up by itself an investigation activity on the issue of state importance in order to collect exhaustive and objective information about the processes taking place in the state and society, about the situation in various spheres of the life of the state and society and arising problems – above other constitutional values and for creating opposition between the said constitutional value and other constitutional values, *inter alia*, the independence of prosecutors when they organise and direct pretrial investigation (as mentioned before, particular constitutional doctrinal provisions are also applicable *mutatis mutandis* to the legal regulation of the relationships between ad hoc investigation commissions of the Seimas and other state institutions (their officials) that, according to laws, conduct pretrial investigation and/or are the subjects of operational activities). The said legal regulation may not be amended or modified in a manner that, in the course of establishing the criteria by following which particular state institutions might disagree that an ad hoc investigation commission of the Seimas receives the information required by it, or the criteria under which some other limitations would be applied as regards the use of this information in the work of an ad hoc investigation commission of the Seimas, the constitutionally reasonable powers of such state institutions not to provide someone with certain information or to apply some other limitations would essentially be

denied. If these powers of particular institutions to disagree that certain information is submitted or to apply some other limitations were limited or denied altogether, various values consolidated, defended, and protected under the Constitution may be jeopardised.

When such disagreement is expressed, it must be substantiated by the relevant reasoning.

[...]

In connection with the *de lege ferenda* standpoint, it also needs to be noted that no matter what legislative regulation there is, such a legislative regulation must, by paying regard to the Constitution, be only such that would not deny the powers, established by means of a law, of subjects not to disclose the information the disclosure of which might inflict harm on the values consolidated, defended, and protected under the Constitution.

On the other hand, a law must also establish a legal regulation that would make it possible to guarantee that the powers, established by means of a law, of the subjects not to disclose the information the disclosure of which might inflict harm on the values consolidated, defended, and protected under the Constitution would not be used to justify the decisions not to disclose also such information the non-disclosure (complete or partial) of which is not defended and protected under the Constitution and where such information, under the procedure established by means of a law, must be disclosed to certain subjects, *inter alia*, to ad hoc investigation commissions of the Seimas, which are formed for an investigation into special questions (of state importance).

[...]

An ad hoc investigation commission of the Seimas may receive the material of pretrial, operational, or other investigation (provided such information may be submitted to such a commission on the whole), provided this information is indeed necessary in order that the Seimas could perform its constitutional functions, only by following in the strictest manner the procedure established in laws and by guaranteeing most strictly that this information will not be disclosed to any person who, under the Constitution and laws, does not have the right to receive such information, since such disclosure of the said information would inflict damage on the values consolidated, defended, and protected under the Constitution. It has been held in this decision of the Constitutional Court that the legislative consolidation of the legal regulation that effectively guarantees the non-disclosure of the secrets defended and protected under the Constitution and the respective organisational and technical means are the necessary conditions for submitting information to ad hoc investigation commissions of the Seimas (provided such information may be submitted to an ad hoc investigation commission of the Seimas on the whole).

[...]

It needs to be emphasised that, as a rule, the information at the disposal of the Office of the Prosecutor General, the National Audit Office, the State Security Department or a pretrial investigation establishment ... where the said information is the material of pretrial, operational, or other investigation, cannot serve as the grounds for conclusions made by an ad hoc investigation commission of the Seimas until the said pretrial, operational, or other investigation is over and the conclusions of such investigation are formalised by procedural documents; this statement is not an absolute one; however, whatever its exceptions, which arise from the Constitution that contains the obligations to defend and protect the rights and legitimate interests of a person, society and the state, as well as other constitutional values, regardless of whether the legislature has carried out its duty and properly reflected these exceptions in laws, in all cases regard must be paid to the powers of a particular state institution, *inter alia*, the powers of a pretrial investigation institution or/and a subject of operational activities to disagree, by giving reasons, that an ad hoc investigation commission of the Seimas receives the said information that is necessary to it, or to demand that certain limitations be applied for the use of such information in the work of an ad hoc investigation commission of the Seimas.

In this context, it needs to be mentioned that, as it was held in the Constitutional Court's ruling of 13 May 2004, "it is clear that the organisational and technical questions of such access must be coordinated with the state institutions at whose disposal the criminal case or other material and documents are".

In the light of the foregoing arguments ... it should be held that ... the provision “The constitutional principle of the separation of powers and other provisions of the Constitution make it possible to draw the conclusion that the Seimas has no powers to form any such ad hoc investigation commissions that would be assigned to carry out an investigation into the matters in the course of the investigation of which the powers of other institutions that exercise public power, as well as the powers of other state and municipal institutions provided for in the Constitution and/or laws, would be interfered with” ... of the Constitutional Court’s ruling of 4 April 2006 ... when it is interpreted in the context of the official constitutional doctrinal provisions of the Constitutional Court’s ruling of 4 April 2006 and the Constitutional Court’s ruling of 13 May 2004, also means that the Seimas has the powers, provided there is a special matter (of state importance), to assign an ad hoc investigation commission of the Seimas to carry out an investigation also into such matters the investigation of which will also require the material of the investigation (as well as pretrial and operational investigation) conducted by the respective institutions; however, the said information cannot be such that, under the Constitution, may not be revealed to an ad hoc investigation commission of the Seimas on the whole; in addition, it is not allowed to deny the powers of the subjects established by law not to disclose the information the disclosure of which could inflict damage on the values consolidated, defended, and protected under the Constitution, as well as on an unfinished pretrial and operational investigation.

The approval by the Seimas of a conclusion of an ad hoc investigation commission of the Seimas

The Constitutional Court’s ruling of 22 December 2016

... the decision of the Seimas, expressed by means of a resolution, to approve the proposals (statements) formulated in a conclusion of an ad hoc investigation commission of the Seimas implies that the Seimas will follow them, *inter alia*, when adopting the respective legal acts.

... it should be noted that the constitutional nature and functions of the Seimas, as the representation of the Nation, through which the Nation executes its supreme sovereign power, and the constitutional principle of responsible governance imply the duty of the Seimas to properly implement the powers granted to it by the Constitution and laws, to implement its functions in observance of the Constitution and law, and to act in the interests of the Nation and the State of Lithuania. Therefore, the Seimas may not approve a conclusion of any possible content made by an ad hoc investigation commission of the Seimas, *inter alia*, any such proposals formulated therein that would be incompatible with the Constitution, *inter alia*, with requirements stemming from the constitutional principles of a state under the rule of law and the separation of powers (as, for instance, in cases where there are proposals that a certain institution of state power, which executes public power, should take over the constitutional powers of another institution of state power or that such powers should be groundlessly interfered with).

The conclusions adopted by an ad hoc investigation commission of the Seimas must be formulated in such a way that would make it possible to adopt lawful decisions, which would comply with the Constitution and the constitutional imperatives arising therefrom. The duty stems for the Seimas from the Constitution, before it decides whether to approve or not to approve a conclusion of an ad hoc investigation commission of the Seimas, or to approve it in part (with reservations), to assess whether the decisions proposed in the said conclusion are compliant with the Constitution, as well as whether the proposals (formulated in the said conclusion of the commission including those whereby certain legal acts are proposed to be adopted or not to be adopted) violate, *inter alia*, the requirements stemming from the constitutional principles of responsible governance, a state under the rule of law, and the separation of powers.

The formation and powers of ad hoc investigation commissions of the Seimas

The Constitutional Court’s ruling of 16 May 2019

... under the Constitution, *inter alia*, Article 76 thereof, in order to implement its constitutional powers to collect the necessary exhaustive and objective information, the Seimas may set up ad hoc structural units – ad hoc investigation commissions and assign them to carry out the respective investigation; having

regard to the constitutional principles of responsible governance, the separation of powers, a state under the rule of law, and democracy, as well as the striving for an open, harmonious, and just civil society, which is declared in the Preamble to the Constitution, ad hoc investigation commissions of the Seimas, under the Constitution, may be set up for examining not any type of issues, but only special issues, i.e. issues of state importance. The Constitution, therefore, requires that the Seimas, when setting up an ad hoc investigation commission of the Seimas, must determine only such issues of state importance to be assigned to this commission for investigation and only such limits of this investigation so that, when carried out by the commission, this investigation does not harm any of the values consolidated, protected, and defended by the Constitution, and that the powers, laid down in the Constitution and/or laws, of other state and municipal institutions are not taken over or there is not any other form of interference with the exercise of their competence laid down in the Constitution and/or laws, *inter alia*, so that no such decisions are prepared that may be adopted under the Constitution and/or laws only by the state or municipal institutions (or their officials) with the respective competence.

The parliamentary minority

The Constitutional Court's ruling of 18 December 2019

The Constitutional Court has noted that the Constitution implies the defence of the parliamentary minority and the minimum requirements for the protection of the opposition of the Seimas (rulings of 26 November 1993, 25 January 2001, and 4 April 2006); the Statute of the Seimas must lay down guarantees for the functioning of the opposition (ruling of 25 January 2001).

... under the Constitution, Lithuania is a pluralistic parliamentary democracy, whose *conditio sine qua non* is the parliamentary minority, *inter alia*, the parliamentary opposition. It should be emphasised that the mission of the parliamentary minority, *inter alia*, that of the parliamentary opposition, is to reflect the diversity of political views in the parliament, thus guaranteeing political pluralism in the parliament of a democratic state under the rule of law and creating the preconditions for such a parliament to fulfil its functions; the mission of the parliamentary opposition is, *inter alia*, to propose a political programme alternative to the parliamentary majority and put forward the political decisions based on this programme, as well as to monitor the political activities of the parliamentary majority, *inter alia*, to criticise it.

At the same time, it should be noted that each member of the Seimas represents the whole of the People; when fulfilling his/her constitutional obligation to represent the People, a member of the Seimas participates in performing all constitutional functions of the Seimas and exercises all powers of a member of the Seimas (ruling of 1 July 2004 and the conclusion of 19 December 2017). It should also be noted that the free mandate of a member of the Seimas must be used in such a way that the Seimas could act effectively in the interests of the People and the State of Lithuania, and that it could properly fulfil its constitutional obligation (conclusions of 27 October 2010, 19 December 2017, and 22 December 2017); in performing their functions and implementing state authority, the members of the Seimas must act in the interests of the People and the State of Lithuania, not in their personal or group interests, and they must not make use of their status in order to gain personal advantage for themselves, persons close to them, or other persons (conclusions of 27 October 2010, 3 June 2014, and 19 December 2017).

It should also be noted that participation in the work of the Seimas is a constitutional duty and at the same time a right of a member of the Seimas (decision of 10 February 2005). In view of this, it should also be noted that the members of the Seimas, *inter alia*, those belonging to the parliamentary minority (*inter alia*, those of the parliamentary opposition), must exercise their rights and all the powers of a member of the Seimas responsibly, contributing to the effective implementation by the Seimas of the functions of the parliament of a democratic state under the rule of law.

The guarantees of the parliamentary minority in the formation of the structural units of the Seimas

The Constitutional Court's ruling of 18 December 2019

... the principles of the organisation and operation of the authorities of the State of Lithuania and the concept of a pluralistic parliamentary democracy, which are implied by the Constitution, *inter alia*, the constitutional principle of a state under the rule of law, require, in accordance with Article 76 of the Constitution, the establishment of such a structure and procedure of activities of the Seimas that would ensure the effective protection of the rights of the parliamentary minority, *inter alia*, those of the parliamentary opposition, and guarantees for its activities. This means, *inter alia*, that the principle of proportional representation must be ensured in the formation of the structural units of the Seimas (*inter alia*, committees and commissions of the Seimas) and that the composition of such structural units of the Seimas, *inter alia*, changes in the said composition, must not depend solely on the discretion of the parliamentary majority.

It should be noted that, as stated by the Constitutional Court, the Seimas, when it sets up ad hoc investigation commissions, must also respect the imperative for the protection of the rights of the minority of the Seimas and the minimum requirements for the protection of the opposition of the Seimas, which stem from the Constitution; these requirements imply, *inter alia*, that ad hoc investigation commissions of the Seimas cannot be composed solely of representatives of the political majority of the Seimas, without involving representatives of the minority (opposition) of the Seimas if they so wish (ruling of 4 April 2006). ... under the Constitution, *inter alia*, Article 76 thereof, and the constitutional principle of a state under the rule of law, the composition of an ad hoc investigation commission of the Seimas, *inter alia*, of a commission of the Seimas set up before the beginning of impeachment proceedings in order to investigate the reasonableness of charges brought against a specific person, cannot be changed solely at the discretion of the parliamentary majority in the absence of clear and constitutionally justifiable reasons. Such reasons could include, *inter alia*, the situation where a member of an ad hoc investigation commission of the Seimas, *inter alia*, of a commission of the Seimas set up before the beginning of impeachment proceedings in order to investigate the reasonableness of charges brought against a specific person, in the exercise of his/her functions, uses the free mandate of a member of the Seimas not in the interests of the People and the State of Lithuania, but uses that mandate, *inter alia*, in his/her own personal or group interests.

... the Constitutional Court has mentioned that one of the methods of the parliamentary activities of the opposition could consist of demonstrative, based on the views and political objectives of the opposition, non-participation by members of the Seimas in meetings of the Seimas, meetings of the committees of the Seimas, or meetings of other structural units to which they are appointed as members in accordance with the procedure laid down in the Statute of the Seimas, i.e. obstruction as a type of political protest and a method of parliamentary activity in an attempt to prevent the adoption of a decision that is not acceptable to the minority may, under the Constitution, in certain situations, be regarded as a rather important reason for not attending the said sittings unless such non-attendance is regular (ruling (no KT26-N13/2016) of 5 October 2016). ... one of the methods of parliamentary activity may include the refusal of the members of the Seimas belonging to the parliamentary minority, *inter alia*, the parliamentary opposition, to take part in the work of ad hoc structural units of the Seimas (*inter alia*, in the work of ad hoc investigation commissions of the Seimas), thus expressing political protest that, in their view, the decisions of the parliamentary majority unjustifiably restrict the rights and guarantees of the functioning of the parliamentary minority, *inter alia*, those of the parliamentary opposition. It should also be noted that the above-mentioned methods of parliamentary activity do not, in themselves, constitute an obstacle to the exercise by the Seimas of its functions as the parliament of a democratic state under the rule of law.

The establishment of the limits of an investigation carried out by an ad hoc investigation commission of the Seimas

The Constitutional Court's ruling of 12 June 2020

... the Constitution, *inter alia*, Articles 67 and 76 thereof, consolidates the powers of the Seimas, while paying regard, *inter alia*, to the constitutional principles of responsible governance and a state under

the rule of law, to establish its structural units, *inter alia*, to form ad hoc investigation commissions of the Seimas and formulate their tasks.

[...]

... the powers of an ad hoc investigation commission of the Seimas may derive only from an act of the Seimas as the representation of the People, i.e. from the expression of the will of the Seimas, but not from the expression of the will or intention of a certain structural unit of the Seimas or a group of members of the Seimas; due to this, it is only the Seimas that may decide on whether or not to set up an ad hoc investigation commission on a certain issue, and it is only the Seimas that may establish the composition, tasks, etc. of this commission, as no one else may express such will for the Seimas; thus, neither any structural unit of the Seimas nor any group of members of the Seimas may express such will (ruling of 4 April 2006).

... under the Constitution, *inter alia*, Articles 67 and 76 thereof, as well as the constitutional principles of responsible governance and a state under the rule of law, the Seimas may set up an ad hoc investigation commission to investigate only a sufficiently defined issue of state importance, i.e. it is necessary to establish such tasks of an ad hoc investigation commission of the Seimas that are necessary for the investigation of the said issue and make clear the limits of the investigative activity of this commission, *inter alia*, what information (from which area) and on what processes (from which area) taking place in the state and society, as well as on what issues (from which area), are to be collected for the Seimas.

Thus, under the Constitution, *inter alia*, Articles 67 and 76 thereof, as well as the constitutional principles of responsible governance and a state under the rule of law, the Seimas must not establish such tasks necessary to investigate an issue of state importance by an ad hoc investigation commission of the Seimas that would not make clear the limits of the investigative activity of this commission and/or that would be impossible to carry out; nor may an issue of state importance assigned to an ad hoc investigation commission and/or the tasks of the commission necessary to investigate this issue be formulated in such a way as to create the preconditions for the commission at its discretion to choose which investigation tasks it is to carry out and to what extent and, thereby, to determine the limits of its investigation. Otherwise, an ad hoc investigation commission of the Seimas would take over the constitutional powers of the Seimas to define an issue of state importance assigned to such a commission and to establish the tasks necessary for the investigation of this issue.

5.5. THE PROCEDURE OF ACTIVITIES OF THE SEIMAS

5.5.1. General provisions

The structure and procedure of activities of the Seimas are established by the Statute of the Seimas (Article 76 of the Constitution)

The Constitutional Court's ruling of 30 March 2000

Article 76 of the Constitution provides that "The structure and procedure of activities of the Seimas shall be established by the Statute of the Seimas. The Statute of the Seimas shall have the force of a law".

A blanket norm is set down in this article of the Constitution, which permits the Seimas to establish, by itself, its structure, the procedure of its activities, procedures for the presentation of draft laws and other draft legal acts, their deliberation and adoption, as well as the competence of other structural subunits of the Seimas and their interrelations, and to regulate other issues of the functioning of the Seimas. Under Article 76 of the Constitution, this must be established in the Statute of the Seimas, which has the force of a law.

The procedure of activities of the Seimas includes the legislative procedure (Article 76 of the Constitution)

The Constitutional Court's ruling of 18 October 2000

... under Article 76 of the Constitution, the structure and procedure of activities of the Seimas are established by the Statute of the Seimas, which has the force of a law. The establishment of the procedure of activities of the Seimas includes the regulation of the legislative procedure.

The chairperson of sittings of the Seimas (Paragraph 1 of Article 66 of the Constitution)

The Constitutional Court's ruling of 25 January 2001

... under Paragraph 1 of Article 66 of the Constitution, sittings of the Seimas are presided over by the Speaker of the Seimas, or his/her Deputy. The duty of the chairperson of sittings of the Seimas is to preside over sittings of the Seimas and to ensure that the procedure of activities of the Seimas would be adhered to. He/she may not, while making use of the rights of the chairperson of sittings of the Seimas, exert influence on the members of the Seimas regarding decisions which must be adopted, or restrict the rights of the members of the Seimas, or control the content of their statements. Otherwise, the essence of the Seimas as a representative institution and the constitutional principle of the free mandate of a member of the Seimas, which ensures the equality of the members of the Seimas and their opportunity to freely express their will, would be denied.

The continuity of the activities of the Seimas; the sessions of the Seimas; the duty of a member of the Seimas to participate in the work of the Seimas

The Constitutional Court's ruling of 1 July 2004

The Constitution establishes such a framework of state power where each institution of state power performs its functions continuously. Under the Constitution, there may not be any such legal situations where a certain institution exercising state power fails to function.

In its ruling of 24 February 1994, the Constitutional Court held that the Seimas must always ensure that its powers established in the Constitution are performed continuously and that in any situation the representation of the Nation should be able to constructively, effectively and continuously implement the supreme sovereign power of the Nation.

The continuity of the activity of the Seimas, as the continuously acting representation of the Nation, is ensured, *inter alia*, by the provisions of Article 59 of the Constitution, which provide that the term of powers of the members of the Seimas begins to be counted from the day on which the newly elected Seimas convenes for the first sitting and that the term of powers of the previously elected members of the Seimas expires at the beginning of this sitting.

The Seimas consists of the members of the Seimas – representatives of the Nation. Each member of the Seimas represents the entire Nation. When fulfilling his/her constitutional obligation to represent the Nation, a member of the Seimas participates in performing all constitutional functions of the Seimas and exercises all powers of a member of the Seimas.

The continuity of the activity of the Seimas also implies the continuity of the activity of a member of the Seimas as a representative of the Nation. Under the Constitution, legal acts should establish such a structure and work procedure of the Seimas and such a legal status of a member of the Seimas that would provide for an opportunity for each member of the Seimas to fulfil his/her constitutional obligation to be constantly involved in the work of the Seimas, the representation of the Nation, and to exercise on a continuous basis his/her constitutional powers, as a representative of the Nation.

It needs to be emphasised that the Constitution treats a member of the Seimas as a professional politician, i.e. as such a representative of the Nation whose work at the Seimas is his/her professional activity.

[...]

As already mentioned before, the activity of the Seimas as the representation of the Nation and of the members of the Seimas as representatives of the Nation is continuous. Paragraph 1 of Article 64 of the Constitution provides that every year, the Seimas convenes for two regular sessions – in spring and autumn; the spring session commences on the 10th of March and ends on the 30th of June, and the autumn session commences on the 10th of September and ends on the 23rd of December. The Seimas may decide to

prolong a session. Paragraph 2 of Article 64 of the Constitution provides for extraordinary sessions: extraordinary sessions are convened by the Speaker of the Seimas on the proposal of not less than one-third of all the members of the Seimas, or by the President of the Republic in cases provided for in the Constitution.

According to the parliamentary tradition of democratic states, a parliamentary session comprises sittings of the parliament and sittings of parliamentary committees and other structural subunits held in the periods between the sittings of the parliament. A form of sessions of the Seimas is sittings of the Seimas and sittings of structural subunits of the Seimas held in the periods between the sittings of the parliament. It has been held in this ruling of the Constitutional Court that participation at the sittings of the Seimas is a constitutional duty of a member of the Seimas. According to the Constitution, the Seimas has the duty to establish such a legal regulation and act in such a way that ensures the performance of the constitutional duty of the members of the Seimas – the duty to participate at the sittings of the Seimas. This means that the Seimas, *inter alia*, has to establish such a legal regulation that would provide that the non-participation by a member of the Seimas at the sittings of the Seimas is possible only for duly justified exceptional reasons. It should be stressed that the behaviour of a member of the Seimas when he/she does not participate at the sittings of the Seimas without a duly justified exceptional reason should be evaluated as failure to perform the constitutional duty of a member of the Seimas, a representative of the Nation; under the Constitution, such non-participation at the sittings of the Seimas cannot but result in the respective legal consequences (legal responsibility) in respect of the member of the Seimas who does not participate at the sittings of the Seimas without a duly justified exceptional reason. The constitutional mission of the Seimas as the representation of the Nation, the constitutional duty of a member of the Seimas to represent the Nation, and the constitutional legal status of a member of the Seimas also imply that it is necessary to establish such a legal regulation that would facilitate the ensuring of effective control over the participation of the members of the Seimas at the sittings of the Seimas, as well as constant and systematic provision of information to the public (electorate) about the participation of the members of the Seimas at the sittings of the Seimas and their public votes on issues discussed by the Seimas.

On the other hand, sessions of the Seimas are not a single form of the activity of the Seimas, and participation at sessions of the Seimas is not a single form of the work of a member of the Seimas at the Seimas or his/her parliamentary activity. As already mentioned before, according to the Constitution, the activity of a member of the Seimas as a representative of the Nation is continuous; each member of the Seimas should have the possibility of exercising his/her constitutional duty to continuously participate at the work of the Seimas, the representation of the Nation, and to incessantly perform his/her constitutional powers as a representative of the Nation. Therefore, according to the Constitution, members of the Seimas also perform their duties as representatives of the Nation beyond sessions of the Seimas. The constitutional principle of the continuity of the activity of the Seimas as the representation of the Nation implies that the period between the sessions of the Seimas is not the leave of the members of the Seimas or any other type of their rest. ... Paragraph 1 of Article 49 of the Constitution, which provides that every working person has the right to rest and leisure, as well as to annual paid leave, and Paragraph 4 of Article 60 of the Constitution, which provides that the duties, rights and guarantees of the activities of a member of the Seimas are established by law, give rise to the duty of the legislature to establish, by means of a law, the duration and other conditions of the annual paid leave of the members of the Seimas. It should also be noted that the establishment of the leave of a member of the Seimas by means of a law would also ensure that no preconditions are created for the constitutionally unfounded treatment of the period between the sessions of the Seimas as a period equivalent to the leave of the members of the Seimas or any other type of their rest.

5.5.2. The legislation process

The right of legislative initiative (Article 68 of the Constitution); the consideration of draft laws
The Constitutional Court's ruling of 25 January 2001

Article 68 of the Constitution provides that the right of legislative initiative at the Seimas belongs to the members of the Seimas, the President of the Republic, and the Government. The citizens of the Republic of Lithuania also have the right of legislative initiative. Fifty thousand citizens of the Republic of Lithuania who have the electoral right may submit a draft law to the Seimas, and the Seimas must consider it.

The implementation of the right of legislative initiative is the first phase of the legislation process. ... Article 68 of the Constitution provides for the subjects who may exercise the right of legislative initiative: members of the Seimas, the President of the Republic, the Government, and 50 000 citizens of the Republic of Lithuania who have the electoral right. In its ruling of 8 November 1993, the Constitutional Court held that the essence and purpose of the right of legislative initiative is to initiate the legislation process. In practice, this right is implemented by submitting a concrete draft law to the parliament. After the subject that is specified in the Constitution submits a draft law, the legislative institution – the Seimas – is under the duty to begin its consideration.

[...]

... in its ruling of 8 November 1993, when analysing the particularities of the phase of the consideration of a draft law, the Constitutional Court noted: “In this phase, remarks, proposals, amendments, and supplements on the draft law submitted by the members of the Seimas are the relevant elements of the phase of consideration; however, they cannot be interpreted as legislative initiative because it has already been implemented. In practice, proposals, amendments, and supplements are submitted until the moment when the law is passed. The procedure for their submission and consideration is regulated by regulatory norms governing the consideration of draft laws. A characteristic feature of this procedure is that it differs in substance from the implementation of the right of legislative initiative. As regards its purpose, the right of legislative initiative is also different from the submission of amendments and supplements to the draft under consideration; after all, they are different parts of the phases of the legislation process.”

The competence of the Seimas to establish the procedure for the adoption, signing, publication, and entry into force of laws and other legal acts passed by the Seimas (Item 2 of Article 67 and Article 76 of the Constitution)

The Constitutional Court's ruling of 19 June 2002

Item 2 of Article 67 of the Constitution provides that the Seimas passes laws. Passing laws is one of the most important functions of the Seimas as the representation of the Nation, as well as its constitutional competence. The Seimas, while passing laws (Item 2 of Article 67 of the Constitution) and establishing the structure and procedure of activities of the Seimas in the Statute of the Seimas (Article 76 of the Constitution) has the constitutional competence to particularise and detail the procedure (established in the Constitution) of the signing, publication, and entry into force of laws and other legal acts passed by referendum or by the Seimas. In doing so, the Seimas may not violate the provisions of the Constitution.

The signing, official publication, and entry into force of laws

The Constitutional Court's ruling of 19 June 2002

It is impossible to interpret the procedure (established in the Constitution) of the signing and official publication of laws by dissociating the provisions of Article 71 of the Constitution ... from other constitutional provisions, since the norms regulating the signing, official publication, and entry into force of laws, establishing the constitutional powers of the President of the Republic and the Speaker of the Seimas to sign and promulgate laws, as well as the related constitutional powers of the Deputy Speaker of the Seimas, are laid down in various articles of the Constitution.

The procedure for the signing, official publication, and entry into force of laws and other legal acts passed by the Seimas is consolidated not only in Article 71 of the Constitution ... but also in Article 70, Item 24 of Article 84, and Article 149 of the Constitution.

[...]

Articles 70 and 71, Item 24 of Article 84, and Article 149 of the Constitution consolidate the procedure for the signing, official publication, and entry into force of laws and other legal acts passed by the Seimas. The observance of such a procedure is an important precondition for ensuring the supremacy of the Constitution.

Paragraph 2 of Article 7 of the Constitution prescribes: “Only laws that are published shall be valid.” The signing and official publication of laws, i.e. the promulgation of laws, is the final stage of the legislation process. The signing and official publication of laws is a necessary condition for their entry into force.

Under the Constitution, a law that has not been signed by the official specified in the Constitution may not be officially published and come into force. Also, a law that has been signed by an official who does not have the required constitutional powers may not be officially published and come into force.

The powers of the President of the Republic, the Speaker of the Seimas, and the Deputy Speaker of the Seimas that are related to the signing and official publication of laws (Articles 70 and 71, Item 24 of Article 84, Article 88, Paragraph 1 of Article 89, and Paragraphs 1 and 2 of Article 149 of the Constitution)

The Constitutional Court’s ruling of 19 June 2002

In the course of a systemic interpretation of the provisions of Articles 70 and 71, Item 24 of Article 84, as well as Paragraphs 1 and 2 of Article 149 of the Constitution, it becomes clear that the signing and official publication of the laws adopted by the Seimas, as well as laws adopted by referendum, are always linked with the President of the Republic.

Under the Constitution, the signing and official promulgation (within the time limits pointed out in Article 71) of laws adopted by the Seimas as well as laws adopted by referendum is within the competence of the President of the Republic. Exercising the constitutional powers to sign and officially promulgate laws, the President of the Republic takes part in the legislation process (ruling of 19 January 1994).

The President of the Republic also has the right not to sign a law adopted by the Seimas and, within ten days of receiving such a law, on reasonable grounds, to refer it back to the Seimas for reconsideration (Paragraph 1 of Article 71 of the Constitution), i.e. he/she has the right of a delaying veto. The Constitution does not provide that the President of the Republic has the right of a delaying veto in connection with laws passed by referendum or in connection with laws amending the Constitution. Under the Constitution, the President of the Republic has such a right only with regard to laws adopted by the Seimas, with the exception of laws amending the Constitution. While implementing the right of a delaying veto, the President of the Republic may also submit proposals how a law adopted by the Seimas, but not yet signed by the President of the Republic, should be amended or supplemented. Under Paragraph 1 of Article 72 of the Constitution, the Seimas may consider anew and adopt a law referred back by the President of the Republic. The law reconsidered by the Seimas is deemed adopted if the amendments and supplements submitted by the President of the Republic are adopted, or if more than 1/2 of all the members of the Seimas vote for the law or, in cases where such a law is a constitutional law, if not less than 3/5 of all the members of the Seimas vote in favour thereof (Paragraph 2 of Article 72 of the Constitution); the President of the Republic must sign such laws within three days and promulgate them immediately (Paragraph 3 of Article 72 of the Constitution). Such a relation between the powers of the President of the Republic and of the Seimas is an important aspect of the separation of powers consolidated in the Constitution.

Under Article 85 of the Constitution, the President of the Republic, implementing the powers vested in him/her, issues acts-decrees. Under Paragraph 1 of Article 71 of the Constitution, when referring a law passed by the Seimas, within ten days of receiving such a law, back to the Seimas for reconsideration, the President of the Republic must indicate in his/her decree the relevant reasons why the law was referred back to the Seimas. Meanwhile, to propose draft amendments and supplements to a law referred back to the Seimas for reconsideration is not a constitutional duty of the President of the Republic, but his/her constitutional right.

The provisions of Paragraph 1 of Article 71, Item 24 of Article 84, and Paragraph 2 of Article 71 of the Constitution are interrelated. Under the Constitution, the President of the Republic has the right, within ten days of receiving a law passed by the Seimas, to perform one legal action from among those pointed out in the above provisions: either to sign and officially promulgate the law passed by the Seimas (right of promulgation), or to refer it back to the Seimas together with the relevant reasons for reconsideration (right of a delaying veto). To perform one of such legal actions is a constitutional duty of the President of the Republic.

The phrase “the law adopted by the Seimas is neither referred back nor signed by the President of the Republic within the specified period” used in Paragraph 2 of Article 71 of the Constitution is not to be interpreted as meaning that the President of the Republic has the right not to sign and, thus, not to promulgate officially the law passed by the Seimas without referring, on reasonable grounds, the said law back to the Seimas. This phrase means such a factual situation where the President of the Republic, even though he/she has the constitutional duty within ten days of receiving a law passed by the Seimas to sign and officially promulgate it or, on reasonable grounds, to refer such a law back to the Seimas for reconsideration, still, due to some reasons, neither promulgates the law passed by the Seimas nor makes use of the right of a delaying veto. Paragraph 2 of Article 71 of the Constitution provides that in such a case the law is signed and officially promulgated by the Speaker of the Seimas.

Thus, the constitutional powers of the Speaker of the Seimas to sign and officially promulgate laws are linked with strict conditions established in the Constitution: the Speaker of the Seimas signs and officially promulgates laws only if the President of the Republic does not sign and officially promulgate them (Paragraphs 2 and 4 of Article 71 and Paragraph 2 of Article 149 of the Constitution). Besides, the Speaker of the Seimas acquires the constitutional powers to sign and officially promulgate laws adopted by the Seimas only in situations where the President of the Republic not only does not promulgate such laws, but also does not use his/her right of a delaying veto (except laws amending the Constitution). Thus, the powers of the Speaker of the Seimas to sign and officially promulgate laws are conditioned by respective actions of the President of the Republic.

Under the Constitution, the situations where the President of the Republic neither promulgates laws passed by the Seimas nor makes use of his/her right of a delaying veto should be interpreted depending on whether the powers of the President of the Republic have ceased, or have not ceased, and whether the President of the Republic holds his/her office or is temporarily unable to hold his/her office.

When establishing which official has the constitutional powers to sign and officially promulgate a law passed by the Seimas where such a law was neither signed nor officially promulgated by the President of the Republic and was not referred, on reasonable grounds, back to the Seimas for reconsideration due to the fact that the powers of the President of the Republic have ceased, it is necessary to take account of the provisions of Article 88 of the Constitution.

[...]

If the powers of the President of the Republic cease on the grounds provided for in Items 1 and 2 of Article 88 of the Constitution, a newly elected President of the Republic takes over the powers of the President of the Republic. The newly elected President of the Republic has all the powers that are provided for the President of the Republic in the Constitution and laws, thus, including the powers to sign and officially promulgate such laws, within ten days of receiving them, that were passed by the Seimas at the time when the previous President of the Republic was in office.

If the powers of the President of the Republic cease on the grounds established in Items 3, 4, 5 and 6 of Article 88 of the Constitution, such a legal situation arises where a new President of the Republic is not elected yet. Paragraph 1 of Article 89 of the Constitution provides that in the event that the President of the Republic dies, resigns, or is removed from office according to the procedure for impeachment proceedings, or the Seimas decides that the state of health of the President of the Republic does not allow him/her to hold office, the office of the President of the Republic is temporarily held by the Speaker of the Seimas. In such a case, the Speaker of the Seimas loses his/her powers at the Seimas, and his/her office is temporarily held, on commissioning by the Seimas, by his/her Deputy.

[...]

... the Speaker of the Seimas, if he/she temporarily holds the office of the President of the Republic under Paragraph 1 of Article 89 of the Constitution, performs everything with which the President of the Republic is charged by the Constitution and laws. Consequently, the Speaker of the Seimas has the powers to sign and officially promulgate laws passed by the Seimas within ten days of receiving them or, on reasonable grounds, to refer them back to the Seimas for reconsideration.

It needs to be noted that the Speaker of the Seimas, if he/she temporarily holds the office of the President of the Republic, exercises the constitutional powers of the President of the Republic, but not those of the Speaker of the Seimas, because the Speaker of the Seimas loses temporarily his/her powers in such a situation. Meanwhile, the Deputy Speaker of the Seimas who temporarily holds the office of the Speaker of the Seimas on commissioning by the Seimas also takes over the powers of the Speaker of the Seimas established in Paragraph 2 of Article 71 of the Constitution to sign and officially promulgate laws in cases where the Speaker of the Seimas who temporarily holds the office of the President of the Republic, due to some reasons, neither signs and officially promulgates such laws nor, on reasonable grounds, refers them back to the Seimas for reconsideration.

Attention should be paid to the fact that the phrase “upon commissioning by the Seimas” used in Paragraph 1 of Article 89 of the Constitution means not a general legal regulation, but an individual one meant for such situations where a certain legal act passed by the Seimas commissions a particular Deputy Speaker of the Seimas to temporarily hold the office of the Speaker of the Seimas only for the period until the Speaker of the Seimas resumes his/her duties again.

In the situations provided for in Paragraph 1 of Article 89 of the Constitution, the Speaker of the Seimas holds the office of the President of the Republic until a new President of the Republic is elected and enters office. ... After the newly elected President of the Republic takes office, the Speaker of the Seimas stops holding temporarily the office of the President of the Republic and resumes the duties of the Speaker of the Seimas, and the Deputy Speaker of the Seimas who held the office of the Speaker of the Seimas on commissioning by the Seimas stops holding temporarily the office of the Speaker of the Seimas and resumes the duties of the Deputy Speaker of the Seimas. At this point, it is the newly elected President of the Republic who has the right of the official promulgation of laws passed by the Seimas and that of a delaying veto.

Also, such legal situations are possible where, even though one of the situations provided for in Paragraph 1 of Article 89 of the Constitution is present, but the respective legal fact is not established in accordance with the proper legal procedure (thus, it has not led to the respective legal effects). In such cases, the Speaker of the Seimas, under the Constitution, may not temporarily hold the office of the President of the Republic yet; thus, he/she still does not have the temporary powers of the President of the Republic to sign and officially promulgate laws passed by the Seimas within ten days of receiving them or, on reasonable grounds, to refer them back to the Seimas for reconsideration. ...

The Constitution regulates in another manner such legal situations where the President of the Republic, within ten days of receiving laws passed by the Seimas, neither signs and officially promulgates them nor, on reasonable grounds, refers them back to the Seimas for reconsideration not due to the reasons that the powers of the President of the Republic have ceased, but because he/she is temporarily unable to hold office.

[...]

The Constitution regulates in still another manner such legal situations where the President of the Republic, due to some reasons, neither signs and officially promulgates laws passed by the Seimas within ten days of receiving them nor, on reasonable grounds, refers them back to the Seimas for reconsideration even though his/her powers have not ceased and he/she holds his/her office.

... under Paragraph 2 of Article 71 of the Constitution, if a law adopted by the Seimas is neither referred, on reasonable grounds, back to the Seimas for reconsideration nor signed by the President of the Republic within the specified period (i.e. within ten days of receiving the said law, as established in Paragraph 1 of the same article), such a law comes into force after it is signed and officially promulgated

by the Speaker of the Seimas. ... under Paragraph 4 of Article 71 of the Constitution, if a law adopted by referendum is not signed and promulgated by the President of the Republic within the specified period (i.e. within five days of receiving the said law, as established in Paragraph 3 of the same article), such a law comes into force after it is signed and officially promulgated by the Speaker of the Seimas.

The aforesaid powers are the independent powers of the Speaker of the Seimas to promulgate laws adopted by the Seimas. On the other hand, the powers of the Speaker of the Seimas to sign and officially promulgate laws passed by the Seimas are linked with such a legal situation where the President of the Republic, within ten days of receiving laws passed by the Seimas, neither signs and officially promulgates them nor, on reasonable grounds, refers them back to the Seimas for reconsideration, even though his/her powers have not ceased and he/she holds his/her office. Therefore ... the powers of the Speaker of the Seimas are conditioned by respective actions of the President of the Republic. When the President of the Republic neither signs and officially promulgates a law passed by the Seimas within ten days of receiving it nor, on reasonable grounds, refers it back to the Seimas for reconsideration, the Speaker of the Seimas is empowered to promulgate such a law under Paragraph 2 of Article 71 of the Constitution.

At the same time, it needs to be noted that, under Paragraphs 2 and 4 of Article 71 of the Constitution, the Speaker of the Seimas has the powers to promulgate laws adopted by the Seimas in cases where the said laws have not been signed and officially promulgated by the President of the Republic, but he/she may not, on reasonable grounds, refer them back to the Seimas for reconsideration. Therefore, the legal content of the powers of the Speaker of the Seimas to promulgate laws adopted by the Seimas is essentially different from that of the powers of the President of the Republic to promulgate them: the President of the Republic has the right to sign laws passed by the Seimas and to officially promulgate them, while the Speaker of the Seimas has both the right and duty to do so.

In this context, it needs to be emphasised that the Speaker of the Seimas implements the said powers only after the 10- and 5-day periods expire, as indicated in Article 71 of the Constitution.

The powers of the Speaker of the Seimas to sign and officially promulgate a law passed by the Seimas is only a right and duty of the Speaker of the Seimas, i.e. his/her constitutional prerogative, which is realised in the event that during the established time (i.e. within ten days of receiving a law) the President of the Republic neither signs such a law passed by the Seimas nor, on reasonable grounds, refers it back to the Seimas for reconsideration, while the Speaker of the Seimas neither temporarily holds the office of the President of the Republic nor temporarily substitutes for the President of the Republic. The said powers of the Speaker of the Seimas are directly established in the Constitution for the Speaker of the Seimas.

In its rulings, the Constitutional Court has held on more than one occasion that the direct establishment of powers in the Constitution means that a certain state institution may not take over such powers from another state institution, nor may the latter state institution transfer or waive the said powers. Consequently, if the Constitution directly establishes powers for a certain state official, he/she may not take over, transfer or waive such powers except in the cases provided for in the Constitution itself. Thus, the powers of the Speaker of the Seimas established in the Constitution to sign and officially promulgate laws passed by the Seimas in the event that within ten days of receiving such laws the President of the Republic neither signs nor, on reasonable grounds, refers them back to the Seimas for reconsideration may not be transferred or passed over to the Deputy Speaker of the Seimas or any other person if the Speaker of the Seimas has not temporarily lost his/her powers at the Seimas under Paragraph 1 of Article 89 of the Constitution.

[...]

In the event that the Speaker of the Seimas temporarily holds the office of the President of the Republic under Paragraph 1 of Article 89 of the Constitution, the Deputy Speaker of the Seimas temporarily holds the office of the Speaker of the Seimas. In such cases, the Deputy Speaker of the Seimas implements not the constitutional powers of the Deputy Speaker of the Seimas, but those of the Speaker of the Seimas whose office he/she temporarily holds on commissioning by the Seimas. ... Under Paragraphs 2 and 4 of Article 71 of the Constitution, at that time, the Deputy Speaker of the Seimas who temporarily holds the office of the Speaker of the Seimas also has the powers to sign and officially promulgate laws if they are not signed and officially promulgated within the established time by the Speaker of the Seimas who

temporarily holds the office of the President of the Republic and, due to this reason, has temporarily lost his/her powers at the Seimas.

In cases where the Speaker of the Seimas temporarily acts for the President of the Republic when the President is temporarily abroad or falls ill and, for this reason, is temporarily unable to hold office under Paragraph 2 of Article 89 of the Constitution, the Speaker of the Seimas does not lose his/her powers in the Seimas. Therefore, under the Constitution, the Deputy Speaker of the Seimas may not exercise the constitutional powers of the Speaker of the Seimas in such cases.

[...]

... in addition, the Seimas may not establish any such a legal regulation whereby the Deputy Speaker of the Seimas (either the First Deputy Speaker or any other) is assigned to sign and officially promulgate laws passed by the Seimas if the Seimas has not passed such a legal act (and where this legal act has not come into force in accordance with the established procedure) that would specify the concrete Deputy Speaker of the Seimas who is assigned to temporarily hold the office of the Speaker of the Seimas due to the fact that, on the basis of one of the grounds specified in Paragraph 1 of Article 89 of the Constitution, the Speaker of the Seimas holds the office of the President of the Republic and has temporarily lost his/her powers at the Seimas.

[...]

... under the Constitution, when the Speaker of the Seimas is temporarily absent, his/her constitutional powers, thus, including the powers granted to him/her under Paragraph 2 of Article 71 of the Constitution to sign and officially promulgate laws passed by the Seimas where the President of the Republic, within the specified time, neither signs such laws nor, on reasonable grounds, refers them back to the Seimas for reconsideration may not be taken over either by the First Deputy Speaker of the Seimas or any other Deputy Speaker of the Seimas.

The powers of the President of the Republic to veto a law on the grounds of procedural infringements committed by the Seimas in the course of passing such a law (Paragraph 1 of Article 71 of the Constitution) (for more on the veto right of the President of the Republic, see 6. The President of the Republic, 6.2. The powers of the President of the Republic)

The Constitutional Court's ruling of 22 February 2008

While interpreting the provision “Within ten days of receiving a law adopted by the Seimas, the President of the Republic ... shall, upon reasonable grounds, refer it back to the Seimas for reconsideration” of Paragraph 1 of Article 71 of the Constitution, it needs to be noted that the President of the Republic may, in the respective decree, specify various grounds – not only legal, but also economic, political, moral, and expediency grounds, also those that are related to the international obligations of the State of Lithuania, etc. ... these grounds do not necessarily have to be linked with the content of the relevant law; they may, in the opinion of the President of the Republic, be also linked with the committed infringements during the procedure of adopting the said law, *inter alia*, with the fact that, while adopting that law, the Seimas did not follow the stages of the legislation process or the rules of legislation that are enshrined in the Constitution and/or the Statute of the Seimas. In such cases, the President of the Republic, while making use of the right of a delaying veto, which is granted to him/her by the Constitution, does not allow such a law to take effect where, in his/her opinion, the said law may be in conflict with the procedure, laid down in the Constitution, for adopting it.

The powers of the Seimas that are related to the adoption of a law vetoed by the President of the Republic (Paragraph 2 of Article 72 of the Constitution)

The Constitutional Court's ruling of 22 February 2008

... if the Seimas does not agree with the reasons of the President of the Republic on the basis of which a certain law adopted by the Seimas is referred back to it for reconsideration after the President of the Republic uses his/her constitutional right of a delaying veto, the Seimas, under Paragraph 2 of Article 72 of the Constitution, may override such a veto of the President of the Republic. Under the Constitution, the

veto exercised the President of the Republic is relative as regards laws adopted by the Seimas; such a veto is not absolute.

[...]

... under Paragraph 2 of Article 72 of the Constitution, if a decree of the President of the Republic, whereby a law adopted by the Seimas is, on reasonable grounds, referred back to the Seimas for reconsideration, contains remarks and supplements made by the President of the Republic, the Seimas, after it reconsiders the said law, may pass and make it a law if more than 1/2 of all the members of the Seimas vote for the law (in cases where such a law is a constitutional law – if not less than 3/5 of all the members of the Seimas vote in favour thereof). However, the Seimas, after it reconsiders such a law, may also pass this law by a smaller majority vote by adopting amendments and supplements submitted by the President of the Republic. On the other hand, the Constitution (as well as the provisions of Article 72) does not prohibit a situation where the Seimas, after it reconsiders a law vetoed by the President of the Republic, neither adopts it by the said absolute (qualified) majority of votes of all the members of the Seimas nor adopts it with amendments and supplements submitted by the President of the Republic, but decides to deem it a non-adopted law (for example, if, when reconsidering it, it turned out that the said law has such deficiencies due to which it must be further improved or may not be adopted in general).

Under the Constitution, the Seimas also has the same possibility in cases where a decree of the President of the Republic, whereby a law adopted by the Seimas is, on reasonable grounds, referred back to the Seimas for reconsideration, does not include any proposals on how such a law should be amended or supplemented. In addition, as mentioned before, in such cases the Seimas, according to Paragraph 2 of Article 72 of the Constitution, may override the veto of the President of the Republic.

The legislation process; assessing a draft law

The Constitutional Court's ruling of 29 September 2010

Paragraph 1 of Article 69 of the Constitution stipulates that “Laws shall be adopted at the Seimas according to the procedure established by law”.

In its rulings of, *inter alia*, 8 November 1993, 29 May 1997, 18 October 2000, 28 June 2001, 14 January 2002, 19 January 2005, and 22 February 2008, the Constitutional Court revealed the notion of the legislation process and held that: under the Constitution, the legislation process is the whole complex of juridically significant acts necessary for the adoption of a law and performed in a certain rigid sequence of logic and time; such a sequence is, in principle, also entrenched in the Constitution: the realisation of the right of legislative initiative is consolidated in Article 68, the adoption of laws is enshrined in Article 69, and the promulgation of laws and their entry into force is established in Articles 70–72; only with the completion of one stage another one starts in consecutive order; the legislation procedure can be regulated in the Statute of the Seimas, as well as in ... laws; it is not allowed to ignore any stage of the legislation process or any rule of the adoption of laws, where the said stages and rules are enshrined in the Constitution, the Statute of the Seimas, or ... laws.

... if the Statute of the Seimas or laws prescribe that a certain stage (stages) of the legislation process must include the verification of a draft law, then it is necessary, *inter alia*, to carry out the evaluation of the effectiveness of the regulation of relationships that is sought by the respective law, as well as an assessment whether such a law would give rise to any negative consequences. It would be constitutionally unjustified if there were failure to carry out such verification at a certain stage of the legislation process (*inter alia*, in the course of the realisation of the right of legislative initiative or the adoption of laws) or if such verification were carried out not at the due stage (stages) of the legislation process. ... it also needs to be noted that the evaluation of the effectiveness of the regulation of relationships that is sought by the relevant law must be carried out in a comprehensive, objective, and impartial manner and, if necessary, persons possessing expert knowledge must be invited.

In this context, it needs to be noted that, the Constitution, namely the constitutional principle of a state under the rule of law, gives rise to the duty of the legislature to establish, in the Statute of the Seimas and/or laws, such a legal regulation of the legislation process whereby the obligation would be consolidated for

the subjects who have the right of legislative initiative and/or for the Seimas, while preparing and/or adopting at the Seimas the legal acts regulating the relationships that can have influence on, *inter alia*, the criminogenic situation and emergence of negative economic consequences, to carry out a proper assessment of a draft law, *inter alia*, as regards the negative consequences that might be caused by the legal regulation laid down by an adopted law. It also needs to be noted that, in its ruling of 19 January 2005, the Constitutional Court held that the compliance of laws and other legal acts with the Constitution is ensured not only by the constitutional control carried out by the Constitutional Court over legal acts adopted by the Seimas, but also by the internal preventive control exercised by the Seimas in the manner established in the Statute of the Seimas, where such control prevents the adoption of laws and other legal acts that could possibly contradict the Constitution or other higher-ranking laws.

The Constitutional Court has held on more than one occasion that the fact that the Seimas, while passing laws, is bound by the Constitution, as well as by its own laws, is an essential element of the constitutional principle of a state under the rule of law.

The procedure for adopting laws (Paragraph 1 of Article 69 and Article 76 of the Constitution)

The Constitutional Court's ruling of 15 February 2013

The fundamental rules for adopting laws are consolidated in Article 69 of the Constitution. Paragraph 1 of Article 69 of the Constitution prescribes: "Laws shall be adopted at the Seimas according to the procedure established by law." The legislation process is the whole complex of juridically significant actions necessary for the adoption of a law and is performed in a rigid sequence of logic and time (*inter alia*, the rulings of 8 November 1993 and 28 September 2011).

When establishing the procedure for adopting laws, the Seimas must pay regard to the norms and principles of the Constitution (ruling of 19 January 2005). Paragraph 1 of Article 69 of the Constitution and the constitutional principle of a state under the rule of law, *inter alia*, give rise to the requirement according to which laws and other legal acts must be adopted according to the procedure that is established in advance and is in compliance with the Constitution, on the condition that this procedure must not be altered after the process of the adoption of those laws has started. It is allowed to deviate from this requirement only when it is necessary in order to secure the protection of other, more important constitutional values.

Paragraph 1 of Article 69 of the Constitution is related to Article 76 thereof establishing that the structure and procedure of activities of the Seimas is established by the Statute of the Seimas, which has the force of a law.

The establishment of the procedure of activities of the Seimas also includes the regulation of the legislation procedure (rulings of 18 October 2000, 14 January 2002, and 19 January 2005). When interpreting the provision of Paragraph 1 of Article 69 of the Constitution together with the provision of Article 76 of the Constitution, the Constitutional Court has stated that both these provisions mean that the legislation procedure may be regulated in the Statute of the Seimas and also in other laws (rulings of 28 June 2001, 14 January 2002, and 19 January 2005).

When the Seimas and each member of the Seimas pass laws and other legal acts, they are bound by the Constitution, constitutional laws, laws, as well as the Statute of the Seimas, which has the force of a law (ruling of 22 February 2008). The duty of the Seimas to follow the rules of passing laws (such rules are defined in the Statute of the Seimas) is a constitutional duty of the Seimas (*inter alia*, the rulings of 8 November 1993, 14 January 2002, and 22 February 2008).

It is not allowed to ignore any stage of the legislation process or any rule of the adoption of laws where the said stages and rules are enshrined in the Constitution, the Statute of the Seimas, or other laws (rulings of 29 September 2010 and 28 September 2011); the necessity to pass laws consistently following the stages and rules of the legislation process stems from the Constitution (ruling of 22 February 2008).

The constitutional duty of the Seimas to follow the aforementioned stages and rules also means that if, under the Statute of the Seimas, it is necessary to receive a conclusion from one of the structural subdivisions of the Seimas (*inter alia*, a committee or commission of the Seimas), it would be

constitutionally unjustified that the said conclusion is not submitted because of the fact that this structural subdivision does not fulfil such a duty, is late to fulfil it, etc. (ruling of 22 February 2008).

The jurisprudence of the Constitutional Court follows the legal position that any essential violations of the legislation procedure established in laws and the Statute of the Seimas imply that the provision of Paragraph 1 of Article 69 of the Constitution, according to which laws are adopted at the Seimas according to the procedure established by law, is also violated (rulings of 28 June 2001, 19 January 2005, and 22 February 2008).

The entry into force of laws; the duty of the legislature to provide for a proper *vacatio legis* (Paragraph 1 of Article 70 of the Constitution) (for more on a *vacatio legis* in the sphere of finance law, see 11. The state budget and finances, 11.1. The state budget. The property liabilities of the state. Taxes, the ruling of 15 February 2013)

The Constitutional Court's ruling of 15 February 2013

Paragraph 1 of Article 70 of the Constitution prescribes that laws adopted by the Seimas come into force after they are signed and officially promulgated by the President of the Republic, unless the laws themselves establish a later date for their entry into force.

It needs to be noted that this constitutional provision may not be interpreted as meaning that the legislature is granted an absolutely free discretion to decide whether to postpone the date of the entry into force of a law (beginning of the application of a law).

... the purpose of the principles of legal certainty, legal security, and the protection of legitimate expectations, which arise from the constitutional principle of a state under the rule of law, is securing the trust of a person in the state and in law; these principles imply the duty of the state to secure the certainty and stability of a legal regulation; persons have the right to reasonably expect that their rights acquired under effective legal acts will be retained for the established period of time and will be implemented in reality. While taking account of the aforementioned, the changes in the legal regulation must be made in such a manner that the persons whose legal status is affected by those changes would have a real opportunity to adapt to a new legal situation. Therefore, in order to create the conditions for persons not only to familiarise themselves with a new legal regulation prior to the beginning of its validity, but also to adequately prepare for the expected changes, it might be necessary to establish a later date of the entry into force of the law (beginning of the application thereof).

Thus, when Paragraph 1 of Article 70 of the Constitution is interpreted in the context of the constitutional principle of a state under the rule of law, it needs to be held that, in some situations, the legislature must provide for a sufficient *vacatio legis*, i.e. a time period from the official publication of the law until its entry into force (beginning of its application), within which the interested persons might be able to prepare themselves to implement the requirements arising from that law.

The jurisprudence of the Constitutional Court has pointed to this duty of the legislature on more than one occasion, by relating this duty to the adoption of laws on restructuring the system of social guarantees or individual guarantees (*inter alia*, the rulings of 4 July 2003, 22 October 2007, 22 November 2007, and 6 February 2012); however, the constitutional requirement to provide for a proper *vacatio legis* must also be complied with in adopting other laws that establish duties or limitations with respect to persons. The time period that should be established for each concrete situation must be assessed in view of a number of circumstances: the purpose of the law in the legal system and the nature of the social relationships regulated by that law, the circle of subjects to whom it is applied and their possibilities of preparing for the entry into force of the new legal regulation, as well as other important circumstances, *inter alia*, those due to which the law must come into force as soon as possible. An important public interest or the concern to protect other values consolidated in the Constitution, outweighing the interest of a person to have more time to adapt to the legal regulation establishing new duties or limitations, may determine the speedy entry into force of the law on the day when it is officially published without any term of a *vacatio legis*. Still, it needs to be emphasised that the speedy entry into force of laws establishing duties or limitations with respect to

persons should be an exception, based and justified on the grounds of special objective circumstances, rather than a rule.

In this context, it should also be noted that, in the course of making substantial amendments to an effective legal regulation, where the said amendments create consequences unfavourable to the legal situation of persons, it may be necessary to provide not only for a sufficient *vacatio legis*, but also for a certain transitional legal regulation. The legal situation of persons, to whom the new legal regulation is applicable, should be regulated by means of transitional provisions in order that those persons would be given enough time to finish the actions started by them on the basis of the previous legal regulation, because the said persons started those actions expecting that the said previous legal regulation would be stable, and in order that such persons might implement their rights acquired under the previous legal regulation.

The constitutional duty of the Seimas to comply with the procedure for adopting legal acts (Paragraph 1 of Article 69 of the Constitution); the right of initiative to adopt laws and other legal acts of the Seimas (Article 68 of the Constitution)

The Constitutional Court's ruling of 29 June 2018

Paragraph 1 of Article 69 of the Constitution prescribes: "Laws shall be adopted at the Seimas according to the procedure established by law."

In its ruling of 27 April 2016, the Constitutional Court noted that the provisions of Paragraph 1 of Article 69 of the Constitution, under which laws must be adopted at the Seimas according to the procedure established by law, may not be interpreted only in a linguistic or literal manner as meaning that only laws must be adopted in accordance with the procedure established in legal acts; Paragraph 1 of Article 69 of the Constitution should be interpreted within the context of the overall constitutional legal regulation, by taking into account, *inter alia*, the mission and functions of the Seimas as the legislature, among other things, the fact that the Seimas adopts not only laws, but also other acts of the Seimas; a substantial violation of the procedure laid down in laws or the Statute of the Seimas regarding the adoption of any legal acts of the Seimas (*inter alia*, substatutory legal acts of the Seimas) concurrently means a violation of Paragraph 1 of Article 69 of the Constitution.

It should be noted that the procedure for adopting legal acts of the Seimas other than laws may have certain particularities; however, when establishing it, the legislature is bound by the requirements stemming from the Constitution, *inter alia*, the requirements for the initiative to adopt these legal acts of the Seimas.

As held by the Constitutional Court more than once, the right of legislative initiative is exercised by submitting a draft law to the Seimas; when a subject with the right of legislative initiative at the Seimas submits a draft law, the legislature, i.e. the Seimas, is under the duty to begin deliberations on it (*inter alia*, the rulings of 8 November 1993, 19 January 2005, and 19 November 2015).

The Constitutional Court has noted that, under the Constitution, the will of the Seimas regarding the adoption of decisions may not be expressed otherwise than by vote of members of the Seimas at a sitting of the Seimas and by the adoption of the respective legal act (decision of 15 May 2009 and the conclusions of 27 October 2010 and 3 June 2014).

Consequently, under the Constitution, when the Seimas adopts legal acts other than laws, the exercise of the constitutional powers of the Seimas and those laid down in laws may also be initiated only by submitting the respective draft legal act to the Seimas, and the Seimas is obliged to begin deliberations on it.

Under Article 68 of the Constitution, the right of legislative initiative belongs to the members of the Seimas, the President of the Republic, the Government, as well as 50 000 citizens who have the electoral right. The provisions of Article 68 of the Constitution, as well as the provision of Paragraph 1 of Article 69 thereof, may not be interpreted only in a linguistic or literal manner as meaning that the specified subjects may initiate at the Seimas the adoption of only those legal acts that have the force and form of a law. These constitutional provisions mean that only the subjects specified in Article 68 of the Constitution have the right of initiative to adopt laws and other legal acts of the Seimas, except in the individual cases indicated in the Constitution itself, where the draft legal acts of the Seimas other than draft laws may be submitted

to the Seimas on a particular matter by the subjects other than those indicated in Article 68 of the Constitution (as, for instance, under Paragraph 1 of Article 103 of the Constitution, the President of the Supreme Court has the right to nominate candidates for the position of a justice of the Constitutional Court by initiating the adoption of the respective decisions of the Seimas).

The legislation process and its stages; the duty of the Seimas to ensure the publicity and transparency of the legislation process by means of the legal regulation of this process, as well as to create the preconditions for ensuring the quality of laws and other acts of the Seimas (Paragraphs 2 and 3 of Article 5, Paragraph 1 of Article 69, and Article 76 of the Constitution)

The Constitutional Court's ruling of 16 April 2019

... the fundamental rules for adopting laws are consolidated in Article 69 of the Constitution; Paragraph 1 of Article 69 of the Constitution prescribes: "Laws shall be adopted at the Seimas according to the procedure established by law" (*inter alia*, the rulings of 8 November 1993, 28 September 2011, and 15 February 2013).

Paragraph 1 of Article 69 of the Constitution is related to Article 76 of the Constitution, establishing that the structure and procedure of activities of the Seimas are established by the Statute of the Seimas, which has the force of a law (ruling of 15 February 2013). The establishment of the procedure of activities of the Seimas also includes the regulation of the legislation procedure (*inter alia*, the rulings of 18 October 2000, 19 January 2005, and 15 February 2013). When interpreting Paragraph 1 of Article 69 of the Constitution in conjunction with Article 76 of the Constitution, the Constitutional Court has stated that the procedure for adopting laws may be regulated in the Statute of the Seimas and also in other laws (*inter alia*, the rulings of 28 June 2001, 19 January 2005, and 15 February 2013).

When establishing the procedure for adopting laws, the Seimas must pay regard to the norms and principles of the Constitution (rulings of 19 January 2005, 15 February 2013, and 19 November 2015).

... under the Constitution, *inter alia*, Paragraphs 2 and 3 of Article 5 thereof, and the constitutional principles of a state under the rule of law and responsible governance, while implementing its powers to regulate the legislative procedure, which are consolidated in Paragraph 1 of Article 69 and Article 76 of the Constitution, the Seimas must, in the Statute of the Seimas and laws, establish such a legal regulation governing the legislation process that ensures, *inter alia*, the publicity and transparency of this process and creates the preconditions for ensuring the quality of laws and other acts of the Seimas.

The legislation process is the whole complex of juridically significant acts that are necessary for the adoption of a law and are carried out in a certain rigid sequence of logic and time; the following stages of the legislation process are universally recognised: the implementation of the right of legislative initiative, the deliberation of a draft law, the adoption of a draft law, and the promulgation of an adopted law and its entry into force; it is with the completion of one stage that another one starts in consecutive order; the consecutive sequence of stages of the legislation process is essentially consolidated in the Constitution: the implementation of the right of legislative initiative is consolidated in Article 68, the adoption of laws is enshrined in Article 69, and the promulgation of laws and their entry into force is established in Articles 70–72 (*inter alia*, the rulings of 8 November 1993, 22 February 2008, and 19 November 2015). They do not separately identify the stage of the deliberation of draft laws, which is the stage guaranteeing the application of the principles of democracy in the legislation process (rulings of 8 November 1993 and 19 November 2015); however, it is possible to decide on its actual existence from other constitutional norms: Article 71 provides for the right of the President of the Republic to refer a law back "to the Seimas for reconsideration" and Article 72 lays down the right of the Seimas "to consider anew and adopt" a law referred back by the President of the Republic (ruling of 8 November 1993). It should be emphasised that the stage of the deliberation of draft laws is a necessary stage of the legislation process (ruling of 8 November 1993); an important element of this stage is the submission of comments and proposals, as well as amendments or supplements, in relation to a draft law under deliberation (*inter alia*, the rulings of 8 November 1993, 25 January 2001, and 19 January 2005).

... the stage of the deliberation of draft laws is particularly important for the implementation of the ... requirements of publicity and transparency of the legislation process and the quality requirements for the adopted laws, which stem from the Constitution, *inter alia*, Paragraphs 2 and 3 of Article 5 thereof, and the constitutional principles of a state under the rule of law and responsible governance. It should be noted that the purpose of the stage of deliberation in the legislation process is to thoroughly examine and assess, at this stage, draft laws submitted to the Seimas and any information concerning them that is significant to the members of the Seimas when they decide on the adoption of the respective laws, among other things, to assess the opinions of the groups of society, the parties concerned, other state or municipal institutions, and persons with specialist knowledge. It should also be noted that, in view of the ... requirements of publicity and transparency of the legislation process and the quality requirements for the adopted laws, which stem from the Constitution, the Statute of the Seimas must establish the structural units of the Seimas (*inter alia*, committees and commissions of the Seimas), which would be assigned to consider and assess the received comments and proposals concerning the draft laws under deliberation, as well as it must establish the internal preventive legal measures of the Seimas enabling it to seek that the laws and other legal acts adopted by it are not in conflict with the Constitution and meet other quality requirements for the laws and other acts of the Seimas, which stem from the Constitution.

In this context, it should be noted that, by separating the implementation of the right of legislative initiative from the submission of comments, proposals, amendments, and supplements in the course of deliberating a draft law, the Constitutional Court has emphasised that they are separate parts of the stages of the legislation process; the purpose of the right of legislative initiative is to initiate the legislation process; it is implemented by submitting a draft law to the Seimas; the submission of comments, proposals, amendments, and supplements at the stage of the deliberation of a draft law should not be considered legislative initiative, as this initiative has already been implemented (*inter alia*, the rulings of 8 November 1993, 25 January 2001, and 19 January 2005).

In the acts of the Constitutional Court, it has also been emphasised on more than one occasion that it is not allowed to ignore any stage of the legislation process or any rule of the adoption of laws consolidated in the Constitution, laws, or the Statute of the Seimas (*inter alia*, the rulings of 29 September 2010, 15 February 2013, and 19 November 2015); the necessity to pass laws consequently following the stages and rules of the legislation process stems from the Constitution (rulings of 22 February 2008, 15 February 2013, and 19 November 2015).

As mentioned before, the Constitution, *inter alia*, Paragraphs 2 and 3 of Article 5 thereof, and the constitutional principles of a state under the rule of law and responsible governance give rise to the duty of the Seimas to establish such a legal regulation governing the legislation process that, *inter alia*, creates the preconditions for ensuring the quality of laws and other acts of the Seimas.

In this context, it should be noted that, as the Constitutional Court noted in its decision of 27 February 2014, the constitutional principles of a state under the rule of law and responsible governance imply that, in cases where in the legislation process it is necessary to rely on special knowledge or special (professional) competence, the Seimas should receive the necessary information from the respective state institutions and take account of it.

It should also be noted that, as the Constitutional Court stated in its ruling of 29 September 2010, the Constitution, specifically the constitutional principle of a state under the rule of law, gives rise to the duty of the legislature to establish, in the Statute of the Seimas and/or laws, such a legal regulation governing the legislation process whereby the duty is consolidated for the subjects with the right of legislative initiative and/or for the Seimas, while preparing and/or adopting at the Seimas the legal acts regulating the relationships that can have influence on, *inter alia*, the criminogenic situation and the increase of negative economic consequences, to carry out a proper assessment of a draft law, *inter alia*, as regards the negative consequences that might be caused by the legal regulation laid down by an adopted law.

... under the Constitution, *inter alia*, Paragraphs 2 and 3 of Article 5 thereof, and the constitutional principles of a state under the rule of law and responsible governance, in order to ensure the quality of the adopted laws, *inter alia*, the compliance of the legal regulation established therein with higher-ranking

legal acts, *inter alia* (and first of all), with the Constitution, its clarity and consistency, as well as the coherence and internal harmony of the whole legal system, the legislation process, especially the stage of the deliberation of draft laws, must be regulated so that the preconditions are created for properly assessing the content and consequences of the legal regulation provided for in draft laws while deliberating them. It should be noted that, in order to achieve this objective, the legal regulation governing the legislation process must create the preconditions for receiving, where necessary, *inter alia*, an opinion from persons with specialist knowledge and the respective state institutions, which would be substantiated by the performed comprehensive, objective, and impartial assessment of the draft law under deliberation and the possible ... consequences of the envisaged legal regulation, as well as the preconditions for making a responsible and reasoned assessment of this opinion.

As mentioned before, the Constitution, *inter alia*, Paragraphs 2 and 3 of Article 5 thereof, and the constitutional principles of a state under the rule of law and responsible governance give rise to the duty of the Seimas to establish such a legal regulation governing the legislation process that ensures, *inter alia*, the publicity and transparency of this process. In this context, Paragraphs 1 and 2 of Article 33 of the Constitution, which consolidate, *inter alia*, the rights of citizens to participate in the governance of their state and to criticise the work of state institutions or their officials, should also be mentioned.

... it should be noted that, under the Constitution, *inter alia*, Paragraphs 2 and 3 of Article 5 thereof, and the constitutional principles of a state under the rule of law and responsible governance, in order to ensure the publicity and transparency of the legislation process and the said rights of citizens consolidated in Paragraphs 1 and 2 of Article 33 of the Constitution, this process, especially the stage of the deliberation of draft laws, which, as mentioned before, is the stage guaranteeing the application of the principles of democracy in the legislation process, must be regulated so that it creates the possibility for society to participate in the deliberations of draft laws. It should be noted that, in order to reach this objective, such a legal regulation of the legislation process must be established under which the draft laws submitted to the Seimas are made public so that the groups of society and the parties concerned have enough time to access them and to express their opinion, comments, and proposals concerning these draft laws, which would be assessed in a responsible and reasoned manner.

The deliberation of draft laws under urgency procedure

The Constitutional Court's ruling of 16 April 2019

Interpreting the provisions of Paragraph 1 of Article 69 and Article 76 of the Constitution, the Constitutional Court has held that, while passing laws, the Seimas may also deliberate them under the urgency procedure provided for in the Statute of the Seimas (ruling of 18 October 2000). It should be noted that the deliberation of draft laws under urgency procedure implies the shortening of the stages of the legislation process, especially the stage of deliberation; thus, it also implies the limited possibilities for ensuring the fulfilment of the requirements of the publicity and transparency of the legislation process, as well as the quality requirements for laws, which stem from the Constitution, *inter alia*, Paragraphs 2 and 3 of Article 5 thereof, and the constitutional principles of a state under the rule of law and responsible governance.

In the light of this ... while regulating the legislative procedure under Paragraph 1 of Article 69 and Article 76 of the Constitution, the Seimas may establish such a legal regulation governing the deliberation of draft laws under urgency procedure according to which this urgency procedure would be applied in special cases, when the political, social, economic, or other circumstances require, as a matter of urgency, to establish a new legal regulation or to amend an effective legal regulation in order to ensure important interests of society and the state or to protect other constitutional values. It should also be noted that the Constitution, *inter alia*, Paragraphs 2 and 3 of Article 5 thereof, and the constitutional principles of a state under the rule of law and responsible governance give rise to the requirement, while regulating the procedure for the deliberation of draft laws under urgency procedure, to create the preconditions for ensuring the internal preventive control of the Seimas over the compliance of laws with the Constitution.

The deliberation of draft laws and other draft acts of the Seimas under special urgency procedure

The Constitutional Court's ruling of 16 April 2019

... implementing the powers to regulate legislative procedure, which are consolidated in Paragraph 1 of Article 69 and Article 76 of the Constitution, the Seimas may also provide for the procedure for the deliberation of draft laws and other draft acts of the Seimas under special urgency procedure in the Statute of the Seimas. It should be noted that this procedure for the deliberation of laws and other acts of the Seimas under special urgency procedure implies that the stages of the legislation process, especially the stage of deliberation, may be shortened even more than while deliberating draft laws and other draft acts of the Seimas under urgency procedure, i.e. the stage of deliberation, which, as mentioned before, is the stage guaranteeing the application of democratic principles in the legislation process, may become only formal. Therefore, the application of the special urgency procedure to the deliberation of laws and other acts of the Seimas provides particularly limited possibilities for ensuring the fulfilment of the requirements of the publicity and transparency of the legislation process and the quality requirements for laws and other acts of the Seimas, which stem from the Constitution, *inter alia*, Paragraphs 2 and 3 of Article 5 thereof and the constitutional principles of a state under the rule of law and responsible governance.

In view of this ... it should be noted that, while regulating the legislative procedure under Paragraph 1 of Article 69 and Article 76 of the Constitution, the Seimas may establish such a legal regulation governing the deliberation of draft laws and other draft acts of the Seimas under special urgency procedure according to which this special urgency procedure could be applied only in exceptional constitutionally justifiable cases, where it is necessary to immediately ensure the vital interests of society and the state as, for instance, while imposing or upon the imposition of martial law or a state of emergency, while announcing or upon the announcement of mobilisation, while adopting a decision to use the armed forces in the event of an armed attack, and/or where a particularly urgent need arises to fulfil international obligations, also due to a natural disaster or under other extreme circumstances, or in the event of such a threat to the security of the state and society the elimination of which requires the decisions of utmost urgency by the legislature. It should also be noted that the Constitution, *inter alia*, Paragraphs 2 and 3 of Article 5 thereof, and the constitutional principles of a state under the rule of law and responsible governance give rise to the requirement to create the preconditions, also while regulating the procedure for the deliberation of draft laws and other draft acts of the Seimas under special urgency procedure, for ensuring the internal preventive control of the Seimas over the compliance of laws and other acts of the Seimas with the Constitution. It should be emphasised that a different legal regulation, under which draft laws and other draft acts of the Seimas could be deliberated under special urgency procedure not in exceptional constitutionally justifiable cases or it would be allowed to adopt draft laws or other draft acts of the Seimas, after they are deliberated under special urgency procedure, without ensuring the internal preventive control of the Seimas over their compliance with the Constitution, would be incompatible with the requirements of the publicity and transparency of the legislation process and the quality requirements for laws and other acts of the Seimas, which stem from the Constitution, *inter alia*, Paragraphs 2 and 3 of Article 5 thereof and the constitutional principles of a state under the rule of law and responsible governance.

5.5.3. Other legal acts passed by the Seimas

Substatutory legal acts passed by the Seimas (Paragraph 2 of Article 70 of the Constitution)

The Constitutional Court's ruling of 28 September 2011

... [the] particularities of a substatutory act are also compulsory for other acts adopted by the Seimas, which are specified in Paragraph 2 of Article 70 of the Constitution; substatutory acts of the Seimas may not contradict the Constitution and laws passed by the Seimas, let alone change the norms of laws and their content (ruling of 19 January 1994).

Substatutory acts passed by the Seimas may not regulate those [social] relationships that, under the Constitution, must be regulated by means of a law (ruling of 13 December 2004). The Seimas, while

resolving the issues that are a subject matter of regulation by means of laws, may not choose the form of a resolution, because a resolution is a lower-ranking legal act (ruling of 19 January 1994). Substatutory legal acts may not replace laws and may not create any general norms that would compete with the norms of laws, because the supremacy of laws over substatutory acts, which is consolidated in the Constitution, would thus be violated (rulings of 21 August 2002 and 13 December 2004).

[...]

[A resolution of the Seimas] ... is a legal act adopted by the Seimas, as the legislature authorised, under the Constitution, *inter alia*, Articles 67 and 70 thereof, to regulate, by means of laws and other legal acts, the most important social relationships. In the hierarchy of legal acts, a resolution of the Seimas has the force of a substatutory legal act.

The Seimas must adopt substatutory legal acts in accordance with the rules for adopting legal acts, as laid down in the Statute of the Seimas (Paragraph 1 of Article 69 of the Constitution)

The Constitutional Court's ruling of 27 April 2016

As noted in the Constitutional Court's ruling of 20 February 2013, not only laws, but also substatutory legal acts of the Seimas, must be adopted in compliance with the rules for adopting legal acts, as defined in the Statute of the Seimas.

It should be noted that the provisions of Paragraph 1 of Article 69 of the Constitution, under which laws must be adopted at the Seimas according to the procedure established by law, may not be interpreted only in a linguistic or literal manner as meaning that only laws must be adopted in accordance with the procedure established in legal acts. Paragraph 1 of Article 69 of the Constitution should be interpreted within the context of the overall constitutional legal regulation, by taking into account, *inter alia*, the mission and functions of the Seimas as legislative power, among other things, the fact that the Seimas adopts not only laws, but also other acts of the Seimas (Articles 67 and 105 of the Constitution). When interpreting Paragraph 1 of Article 69 of the Constitution in the context of the overall constitutional regulation, it should be held that a substantial violation of the procedure laid down in laws or the Statute of the Seimas regarding the adoption of any legal acts of the Seimas (*inter alia*, substatutory legal acts) concurrently leads to a violation of Paragraph 1 of Article 69 of the Constitution.

[...]

As held in the Constitutional Court's ruling of 20 February 2013, the fact that the Seimas does not comply with the Constitution and the Statute of the Seimas in the course of adopting substatutory legal acts means that the constitutional principle of a state under the rule of law, which implies the hierarchy of legal acts, is also violated.

The constitutional duty of the Seimas to comply with the procedure for adopting legal acts (Paragraph 1 of Article 69 of the Constitution); the right of initiative to adopt laws and other legal acts of the Seimas (Article 68 of the Constitution)

See 5.5.2. The legislation process; the ruling of 29 June 2018.

The powers of the Seimas to establish the procedure for adopting acts of the Seimas other than laws (Paragraph 1 of Article 69 and Article 76 of the Constitution)

The Constitutional Court's ruling of 16 April 2019

As the Constitutional Court has noted, the provisions of Paragraph 1 of Article 69 of the Constitution, under which laws must be adopted at the Seimas according to the procedure established by law, may not be interpreted only in a linguistic or literal manner as meaning that only laws must be adopted in accordance with the procedure established in legal acts; Paragraph 1 of Article 69 of the Constitution should be interpreted within the context of the overall constitutional legal regulation, by taking into account, *inter alia*, the mission and functions of the Seimas as the legislature, among other things, the fact that the Seimas adopts not only laws, but also other acts of the Seimas (Articles 67 and 105 of the Constitution) (rulings of 27 April 2016 and 29 June 2018).

In view of this, it should be noted that, while implementing the powers, consolidated in Paragraph 1 of Article 69 and Article 76 of the Constitution, to regulate the legislative procedure, the Seimas must also provide for the legislative procedure of the acts of the Seimas other than laws. As these acts of the Seimas, as a rule, do not establish a new legal regulation or amend an effective legal regulation, it should also be noted that the legislative procedure of the acts of the Seimas other than laws may be simpler, *inter alia*, the same as the procedure for the deliberation of draft laws as a matter of urgency. However, it should be emphasised that, in any case, when regulating the legislative procedure of the acts of the Seimas other than laws, it is necessary to respect the requirements of the publicity and transparency of the legislative procedures and the quality requirements for the acts of the Seimas, which stem from the Constitution, *inter alia*, Paragraphs 2 and 3 of Article 5 thereof, and the constitutional principles of a state under the rule of law and responsible governance.

The concept of a resolution of the Seimas

The Constitutional Court's ruling of 28 August 2020

The Constitutional Court has ... held that a resolution of the Seimas is a legal act adopted by the Seimas as the legislature authorised under the Constitution, *inter alia*, Articles 67 and 70 thereof, to regulate, by means of laws and other legal acts, the most important social relationships. In the hierarchy of legal acts, a resolution of the Seimas has the force of a substatutory legal act (ruling of 28 September 2011). It should be noted that such a concept of a resolution of the Seimas implies that, by means of a resolution, the Seimas decides on the most important state governance issues that are assigned to the competence of the Seimas under the Constitution and laws and do not require a legal regulation established by means of a law, but deciding on these issues gives rise to legal consequences, *inter alia*, rights and duties, for other persons.

... the Constitution *expressis verbis* stipulates that the Seimas adopts resolutions on: early elections to the Seimas (Paragraphs 1 and 4 of Article 58); the deprivation of the mandate of a member of the Seimas who either does not take the oath according to the procedure established by law or takes a conditional oath (Paragraph 3 of Article 59); referendums (Item 3 of Article 67); the cessation of the powers of the President of the Republic when the Seimas, taking into consideration the conclusion of the Constitutional Court, by a 3/5 majority vote of all the members of the Seimas, decides that the state of health of the President of the Republic does not allow him/her to hold office (Item 6 of Article 88); the implementation of laws (Item 2 of Article 94); an application to the Constitutional Court, requesting an investigation into the conformity of an act with the Constitution (Paragraph 5 (wording of 21 March 2019) of Article 106).

Thus, in accordance with Paragraphs 1 and 4 of Article 58, Paragraph 3 of Article 59, Item 3 of Article 67, Item 6 of Article 88, and Item 2 of Article 94 of the Constitution, the Seimas adopts resolutions of the Seimas when deciding on the most important state governance issues that are specified in these provisions of the Constitution. Taking into account such an overall constitutional regulation, *inter alia*, the above-mentioned constitutional concept of a resolution of the Seimas, it should be concluded that, in deciding also on other state governance issues assigned to it under the Constitution and laws in cases where the regulation of these issues does not require the adoption of laws and deciding on these issues gives rise to legal consequences for other persons, the Seimas adopts resolutions of the Seimas, although the respective provisions of the Constitution do not explicitly specify the form of the act to be adopted by the Seimas. Under the Constitution, such issues include, *inter alia*: the consent of the Seimas to hold criminally responsible or detain, or to otherwise restrict the liberty of members of the Seimas, the Prime Minister or ministers, or judges (Paragraph 2 of Article 62, Article 100, and Paragraph 2 of Article 114); the revocation of the mandate of a member of the Seimas through the procedure for impeachment proceedings (Item 5 of Article 63 and Article 74); the termination of the powers of a member of the Seimas after declaring the respective election invalid or if the law on elections is grossly violated, or when he/she takes up or does not give up an occupation that is incompatible with the duties of a member of the Seimas (Items 6 and 7 of Article 63); calling elections of the President of the Republic (Item 4 of Article 67); appointing and

releasing the heads of state institutions provided for by law (Item 5 of Article 67); giving or not giving assent to the candidate proposed by the President of the Republic for the post of the Prime Minister, giving assent to the release of the Prime Minister from his/her duties (Item 6 of Article 67, Items 4, 5, and 8 of Article 84, and Paragraph 1 of Article 92); giving or not giving assent to the programme of the Government submitted by the Prime Minister (Item 7 of Article 67 and Paragraph 5 of Article 92); expressing no confidence in the Government, the Prime Minister, or ministers (Item 9 of Article 67 and Item 2 of Paragraph 3, as well as Paragraph 4, of Article 101); the appointment of the justices of the Constitutional Court, the justices of the Supreme Court, and the Presidents of these courts (Item 10 of Article 67, Paragraphs 1 and 2 of Article 103, and Paragraph 2 of Article 112); the appointment of the Auditor General and the Chairperson of the Board of the Bank of Lithuania and their release from duties (Item 11 of Article 67, Paragraph 2 of Article 126, and Paragraph 2 of Article 133); calling elections to municipal councils (Item 12 of Article 67); forming the Central Electoral Commission and altering its composition (Item 13 of Article 67); imposing direct rule and martial law, declaring a state of emergency, announcing mobilisation demobilisation, and adopting a decision to use the armed forces (Item 20 of Article 67, Paragraph 4 of Article 123, Paragraph 1 of Article 142, and Paragraph 1 of Article 144); removing from office the President of the Republic, the President and justices of the Constitutional Court, the President and justices of the Supreme Court, the President and judges of the Court of Appeal according to the procedure for impeachment proceedings (Article 74, Paragraph 2 of Article 86, Item 5 of Article 88, Item 5 of Article 108, and Article 116); dismissing from office officials appointed or elected by the Seimas, with the exception of the persons specified in Article 74 of the Constitution, in cases where the Seimas expresses no confidence in them (Article 75); giving assent to the candidates for the posts of judges of the Court of Appeal and the President of this court (Item 11 of Article 84 and Paragraph 3 of Article 112); giving assent to the candidate for the post of the Prosecutor General of the Republic of Lithuania (Item 11 of Article 84 and Paragraph 5 of Article 118); giving assent to appointing the Commander of the Armed Forces and the Head of the Security Service and releasing them from duties (Item 14 of Article 84); the termination of the powers of a justice of the Constitutional Court on his/her resignation or when he/she is incapable of holding office due to the state of his/her health (Items 3 and 4 of Article 108); approving or overruling the decisions of the President of the Republic on defence against armed aggression, the imposition of martial law, the announcement of mobilisation, and the declaration of a state of emergency (Paragraph 2 of Article 142 and Paragraph 2 of Article 144).

The procedure for adopting resolutions of the Seimas

The Constitutional Court's ruling of 28 August 2020

... one of the democratic principles of the adoption of decisions in the Seimas is the principle of majority (*inter alia*, the rulings of 22 July 1994 and 4 April 2006 and the decision of 15 May 2009). The political will of the majority of the members of the Seimas is reflected in decisions adopted by the Seimas (*inter alia*, the conclusion of 31 March 2004, the ruling of 4 April 2006, and the decision of 15 May 2009). Under the Constitution, the will of the Seimas regarding the adoption of particular decisions may not be expressed otherwise than by vote of members of the Seimas at a sitting of the Seimas and the adoption of the respective legal act (*inter alia*, the decision of 15 May 2009, the conclusion of 3 June 2014, and the ruling 29 June 2018).

As the Constitutional Court has noted, the provisions of Paragraph 1 of Article 69 of the Constitution, under which laws must be adopted at the Seimas according to the procedure established by law, must not be interpreted only in a linguistic or literal manner as meaning that only laws must be adopted in accordance with the procedure established in legal acts; Paragraph 1 of Article 69 of the Constitution should be interpreted within the context of the overall constitutional legal regulation, by taking into account, *inter alia*, the mission and functions of the Seimas as the legislature, among other things, the fact that the Seimas adopts not only laws, but also other legal acts of the Seimas (rulings of 27 April 2016, 29 June 2018, and 16 April 2019). ... in deciding on state governance issues assigned to it under the Constitution and

laws in cases where the regulation of these issues does not require the adoption of laws and deciding on these issues gives rise to legal consequences for other persons, the Seimas adopts resolutions of the Seimas.

In view of this, it should be noted that the provisions of Paragraph 2 of Article 69 of the Constitution must not be interpreted only in a linguistic or literal manner as meaning that only laws are deemed to be adopted if a majority of the members of the Seimas participating in the sitting have voted for them. In accordance with the above-mentioned democratic principle of decision-making in the Seimas by majority, under Paragraph 2 of Article 69 of the Constitution, a majority of the members of the Seimas participating in the sitting is also necessary for the adoption of resolutions of the Seimas by means of which the Seimas decides on state governance issues assigned to it under the Constitution and laws and deciding on these issues gives rise to legal consequences for other persons, unless the Constitution explicitly specifies a different majority necessary for the adoption of the respective decision of the Seimas (for example, under Article 74 of the Constitution, the Seimas may, through impeachment proceedings, by a 3/5 majority vote of all its members, remove the President of the Republic, the President and justices of the Constitutional Court, the President and justices of the Supreme Court, the President and judges of the Court of Appeal, or revoke the mandate of a member of the Seimas; under Article 75 of the Constitution, the officials appointed or elected by the Seimas, with the exception of the persons specified in Article 74 of the Constitution, are dismissed from office when the Seimas expresses no confidence in them by a majority vote of all the members of the Seimas).

... the rule for adopting, by a majority vote of the members of the Seimas participating in the sitting of the Seimas, resolutions of the Seimas by means of which the Seimas decides on state governance issues assigned to it under the Constitution and laws in cases where deciding on these issues gives rise to legal consequences for other persons is explicitly laid down in Paragraph 5 of Article 92 of the Constitution, according to which a new Government receives the powers to act after the Seimas gives assent to its programme by a majority vote of the members of the Seimas participating in the sitting.

Resolutions of the Seimas written down in the minutes

The Constitutional Court's ruling of 28 August 2020

... under the Constitution, by means of the resolutions of the Seimas that are written down in the minutes of a sitting of the Seimas, the Seimas may not decide on any state governance issues that are assigned to the Seimas under the Constitution and laws in cases where the regulation of these issues does not require the adoption of laws and deciding on these issues gives rise to legal consequences for other persons.

6. THE PRESIDENT OF THE REPUBLIC

6.1. THE CONSTITUTIONAL STATUS OF THE PRESIDENT OF THE REPUBLIC

The immunity of the President of the Republic (Article 86 of the Constitution)

The Constitutional Court's ruling of 8 May 2000

Paragraph 1 of Article 86 of the Constitution prescribes:

“The person of the President of the Republic shall be inviolable: while in office, he may be neither detained nor held criminally or administratively liable.”

[...]

[By this provision of Paragraph 1 of Article 86 of the Constitution] the immunity of the President of the Republic ... [is] established. Immunity means additional guarantees for the protection of the inviolability of the respective person where such guarantees are necessary and indispensable for the proper performance of the duties of the said person. The immunity of the President of the Republic as the Head of State ... must ensure that the President of the Republic ... might perform the functions established in the Constitution without hindrance and that the officials of executive power could be precluded from exerting the possible adverse influence on the President of the Republic

[...]

Paragraph 1 of Article 86 of the Constitution provides that, while in office, the President of the Republic may be neither detained nor held criminally or administratively liable. Consequently, while the President of the Republic is in office, his/her immunity is very broad, i.e. his/her right of immunity may be subject to limitations only after he/she ceases to perform his/her duties. On the other hand, immunity is limited in time: immunity is applied from the moment when the President of the Republic takes office and expires when he/she loses his/her duties as the President of the Republic. It needs to be emphasised that the Constitution provides for the constitutional responsibility of the President of the Republic: if he/she is found to have committed a gross violation of the Constitution, to have breached the oath of office, or to have committed a crime, he/she may be removed from office by the Seimas through impeachment proceedings (Paragraph 2 of Article 86 of the Constitution) and then his/her right of the inviolability of his/her person may be limited on the same grounds and in accordance with the same procedure as the said right of other persons.

[...]

As mentioned before, the immunity of the President of the Republic is very broad while he/she is in office. The content of immunity is composed of the following: while in office, the President of the Republic may not be subjected to criminal prosecution as he/she may not be held criminally liable; any measures (save impeachment proceedings) that might create the conditions for initiating criminal prosecution against the President of the Republic are prohibited. Thus, the conclusion should be drawn that no forms of operational activities, including a criminal conduct simulation model, may be applied against the President of the Republic.

The constitutional status of the President of the Republic as the Head of State (Article 77 of the Constitution)

The Constitutional Court's ruling of 30 December 2003

Paragraph 1 of Article 77 of the Constitution provides that the President of the Republic is the Head of State. Interpreting Article 77 of the Constitution, in its ruling of 8 May 2000, the Constitutional Court

held that “the status of the Head of State is acquired for the period established in the Constitution only by one person, i.e. the President of the Republic, who is elected by citizens of the Republic of Lithuania. The legal status of the President of the Republic as the Head of State is individual and different from that of all other citizens”. Under the Constitution, the legal status of the President of the Republic as the Head of State is different from that of the rest of state officials (the ruling of 19 June 2002).

In its ruling of 19 June 2002, the Constitutional Court also held that the individual and exceptional legal status of the President of the Republic as the Head of State is revealed in various provisions of the Constitution, which consolidate: the inviolability of the President of the Republic; the impossibility for the President of the Republic to be a member of the Seimas, to hold another office, and to receive remuneration other than remuneration established for the President of the Republic and remuneration for creative activities; the duty of a person elected as the President of the Republic to suspend his/her activities in political parties and political organisations; the requirements for candidates seeking the office of the President of the Republic; the grounds and procedure for the election of the President of the Republic; the oath of the President of the Republic; the powers of the President of the Republic, their commencement and cessation etc.

Under Paragraph 2 of Article 77 of the Constitution, the President of the Republic represents the State of Lithuania.

It should be noted that the State of Lithuania is created by the Nation; sovereignty belongs to the Nation (Article 2 of the Constitution). Article 4 of the Constitution provides that “The Nation shall execute its supreme sovereign power either directly or through its democratically elected representatives”. Under Paragraph 1 of Article 55 of the Constitution, members of the Seimas are representatives of the Nation. Thus, only the Seimas is the representation of the Nation.

As mentioned before, the President of the Republic is the Head of State and represents the State of Lithuania. Although representing the Nation and representing the State must not be opposed, however, representing the Nation and representing the State are not identical legal categories: the said categories have the legal content characterised by individual features.

The oath of the President of the Republic (Paragraph 1 of Article 82 of the Constitution)

The Constitutional Court's ruling of 30 December 2003

Paragraph 1 of Article 82 of the Constitution consolidates the provision that the elected President of the Republic takes office only after he/she takes an oath to the Nation.

In view of the fact that the representatives of the Nation, members of the Seimas, sit in the House of the Seimas, the phrase “in Vilnius, in the presence of the representatives of the Nation – the Members of the Seimas” of Paragraph 1 of Article 82 of the Constitution implies that the elected President of the Republic must take an oath specifically in the House of the Seimas, which, under the Constitution, must be only in Vilnius, the capital of the Republic of Lithuania.

Paragraph 1 of Article 82 of the Constitution establishes the content of the oath of the elected President of the Republic to the Nation: the elected President of the Republic must take an oath to be faithful to the Republic of Lithuania and the Constitution, to conscientiously fulfil the duties of his/her office, and to be equally just to all.

It needs to be emphasised that the oath of the elected President of the Republic reflects the main values enshrined in the Constitution – the Nation links such values with the office of the President of the Republic.

[...]

It needs to be noted that the oath of the elected President of the Republic is different from the oath taken by a member of the Seimas, by the Prime Minister and ministers, by a justice of the Constitutional Court, or by a judge of another court. The elected President of the Republic is the only person indicated in the Constitution who takes an oath to the special entity to whom sovereignty belongs: the elected President of the Republic takes an oath to the Nation. The oath of the elected President of the Republic has the characteristic difference, according to which, the oath of the elected President of the Republic to the Nation reflects the most important and universal constitutional values: while in office, the President of the Republic

cannot deviate from the said values; these constitutional values are inseparable from one another; the content of these values is very voluminous, comprising numerous other constitutional obligations, which are of no less importance.

The oath of the elected President of the Republic is not a mere formal or symbolic act. In view of the fact that the institute of the oath of the President of the Republic and the content of such an oath are established in the Constitution, the oath of the President of the Republic has a constitutional significance and gives rise to constitutional legal effects.

The provisions of Paragraph 1 of Article 82 of the Constitution that, on the day following the expiry of the term of office of the President of the Republic, the elected President of the Republic takes office after he/she takes an oath to the Nation mean that, as long as the elected President of the Republic has not taken an oath to the Nation, he/she cannot take office. The elected President of the Republic takes office precisely at the moment after he/she takes an oath to the Nation.

The action of the oath of the elected President of the Republic is also legally significant due to the fact that, from the moment that the elected President of the Republic takes an oath, the powers of the former President of the Republic cease.

It needs to be noted that, under the Constitution, any refusal of the elected President of the Republic to take an oath to the Nation in the Seimas at the time prescribed by the Constitution, or taking an oath with reservations or changing the text of the oath, as well as any refusal of the elected President of the Republic to sign the text of the oath, means that the elected President of the Republic may not take office and that a new election of the President of the Republic must be called.

The action of the oath of the President of the Republic is also legally significant due to the fact that, from the moment of taking an oath, the duty arises for the President of the Republic to act only in such a way as he/she is obliged by the oath taken to the Nation. A breach of the oath constitutes one of the grounds on which the President of the Republic may be removed from office through impeachment proceedings (Article 74 of the Constitution). It needs to be noted that a breach of the oath is also a gross violation of the Constitution, while a gross violation of the Constitution is also a breach of the oath.

The duty of the President of the Republic to be equally just to all (Paragraph 1 of Article 82 of the Constitution)

The Constitutional Court's ruling of 30 December 2003

... under Article 82 of the Constitution, the elected President of the Republic must take an oath to be faithful to the Republic of Lithuania and the Constitution, to conscientiously fulfil the duties of his/her office, and to be equally just to all.

The requirement consolidated in Paragraph 1 of Article 82 of the Constitution, according to which the President of the Republic must be equally just to all, should be interpreted by taking into consideration the provision of Paragraph 1 of Article 29 of the Constitution, whereby all persons are equal before the law, courts, and other state institutions and officials.

[...]

The requirement that the President of the Republic must be equally just to all, which is established in Paragraph 1 of Article 82 of the Constitution, in conjunction with the provision of Paragraph 2 of Article 77 of the Constitution, whereby the President of the Republic performs everything with which he/she is charged by the Constitution and laws, means that the President of the Republic, while implementing the powers established for him/her in the Constitution and laws, must follow only the Constitution and laws and must not violate them, that the President of the Republic must act only in the interests of the Nation and the State of Lithuania, that the President of the Republic, while implementing the powers established for him/her in the Constitution and laws, cannot act by pursuing such aims and interests that are inconsistent with the Constitution and laws or with public interests. The constitutional requirement that the President of the Republic must be equally just to all obligates him/her to act in such a manner that would prevent a conflict between the interests of the President of the Republic as a private person on the one hand, and, on

the other hand, his/her constitutional duty that he/she as the Head of State must represent the State of Lithuania and act only in the interests of the Nation and the State of Lithuania.

The provision of Paragraph 1 of Article 82 of the Constitution, according to which the President of the Republic must be equally just to all, in conjunction with the provision of Article 29 of the Constitution, whereby all persons are equal before state institutions and officials, means not only that the President of the Republic has the duty to treat equally all persons for whom the respective legal provision is meant, but also that the President of the Republic has the duty to apply this legal norm equally and justly to all persons. The provision of Paragraph 1 of Article 29 of the Constitution, according to which all persons are equal before state institutions and officials, and the provision of Paragraph 1 of Article 82, whereby the President of the Republic must be equally just to all, cannot be interpreted as meaning that, **purportedly**, according to these provisions, the President of the Republic would be equally just to all in situations where a certain legal norm is applied to all persons equally unjustly. Such an interpretation of the said provisions of Paragraph 1 of Article 29 and Paragraph 1 of Article 82 of the Constitution would not be in line with the constitutional principles of a state under the rule of law and justice on which the Constitution itself and the entire legal system of Lithuania are based.

... as such, the mere fact that a decree of the President of the Republic is declared in conflict with the Constitution or a law does not mean that the President of the Republic has grossly violated the Constitution, or breached the oath, or committed a crime. Deciding whether the President of the Republic, having issued a decree that is in conflict with the Constitution or a law, has grossly violated the Constitution, or breached the oath, or committed a crime, it is necessary to assess not only the content of the decree of the President of the Republic, but also whether, in the course of issuing the decree of the President of the Republic, the requirements established in the Constitution and the relevant laws were fulfilled and whether the established procedure was followed; in addition, it is also necessary to assess other factual circumstances surrounding the issuance of such a decree.

It needs to be noted that a violation of Paragraph 1 of Article 29 of the Constitution is in all cases a violation of the principle of the formal equality of persons. Meanwhile, the provision of Paragraph 1 of Article 82 of the Constitution, whereby the President of the Republic must be equally just to all, consolidates not only the duty of the President of the Republic not to violate the principle of the formal equality of persons, but also his/her duty not to act in the manner that, in the course of the implementation of the powers established for him/her in the Constitution and laws, the President of the Republic would knowingly treat not equally justly persons (their groups) with respect to whom he/she adopts decisions. Thus, the provision of Paragraph 1 of Article 82 of the Constitution, whereby the President of the Republic must be equally just to all, would not necessarily be violated in all cases when Paragraph 1 of Article 29 of the Constitution (the principle of the formal equality of persons) is violated, but only when the President of the Republic, while implementing the powers established for him/her in the Constitution and laws, knowingly acts in such a way that persons (their groups) with respect to whom the President of the Republic adopts decisions would not be treated equally justly.

Thus, as such, the mere fact that a decree of the President of the Republic is ruled to be in conflict with Paragraph 1 of Article 29 of the Constitution does not mean that, by issuing such a decree, the President of the Republic violated the provision of Paragraph 1 of Article 82 of the Constitution, according to which the President of the Republic must be equally just to all. While deciding whether, by issuing a decree that is in conflict with Paragraph 1 of Article 29 of the Constitution, the President of the Republic at the same time violated the provision of Paragraph 1 of Article 82 of the Constitution, whereby the President of the Republic must be equally just to all, it is necessary to assess not only the content of such a decree of the President of the Republic, but also the factual circumstances surrounding the issuance of such a decree.

The phrase "all persons shall be equal" of Paragraph 1 of Article 29 of the Constitution means that the principle of the equality before the law, the court, and other state institutions and officials must be applied not only to citizens of the Republic of Lithuania, but also to citizens of foreign states and stateless persons.

... the provision of Paragraph 1 of Article 82 of the Constitution, whereby the President of the Republic must be equally just to all, means that the President of the Republic must be equally just not only

to citizens of the Republic of Lithuania who comprise the national community – the civil Nation, but also to all other persons, i.e. to citizens of foreign states and stateless persons with respect to whom the President of the Republic adopts decisions.

... if a law provides that citizenship of the Republic of Lithuania may be granted by way of exception to a citizen of a foreign state or a stateless person in recognition of merit to the Republic of Lithuania, this means that this requirement must be applied to all citizens of foreign states or stateless persons who request citizenship of the Republic of Lithuania granted by way of exception. If citizenship of the Republic of Lithuania were granted by way of exception to a citizen of a foreign state or a stateless person with no merit to the Republic of Lithuania, the principle of the equality of persons that includes the equality of persons before state institutions or officials, as consolidated in Paragraph 1 of Article 29 of the Constitution, as well as the provision of Paragraph 1 of Article 82 of the Constitution, whereby the President of the Republic must be equally just to all, would be disregarded.

If a law established the grounds under which citizenship of the Republic of Lithuania is not granted, the principle of the equality of all persons, as well as the constitutional imperative that the President of the Republic must be equally just to all, would require verification in all cases before the issuance of a decree of the President of the Republic on granting citizenship of the Republic of Lithuania (as well as on granting citizenship of the Republic of Lithuania by way of exception to citizens of foreign states or stateless persons in recognition of their merit to the Republic of Lithuania) whether there are any grounds, established in the law, that preclude granting citizenship of the Republic of Lithuania. Otherwise, the principle of the equality of persons, which is consolidated in Article 29 of the Constitution, as well as the provision of Paragraph 1 of Article 82 of the Constitution, whereby the President of the Republic must be equally just to all, would be disregarded.

The requirements established in Article 29 and Paragraph 1 of Article 82 of the Constitution would also be disregarded if the President of the Republic, when implementing the powers established for him/her in the Constitution and laws to grant citizenship of the Republic of Lithuania, would apply equally unjustly a legal norm addressed to all relevant persons (either to separate groups of persons or to individual persons).

It needs to be noted that the duty of the President of the Republic to be equally just to all, arising out of the Constitution, when he/she implements the powers, established for him/her in the Constitution and laws, to decide on citizenship issues has certain particularities. These particularities are determined by the fact that, under [the law], the President of the Republic has the right, but not the duty, to grant citizenship by way of exception to citizens of foreign states or stateless persons in recognition of their merit to the Republic of Lithuania: citizenship of the Republic of Lithuania may not necessarily be granted by way of exception even to a citizen of a foreign state or a stateless person with merit to the Republic of Lithuania. This is decided at the discretion of the President of the Republic. However, the circumstance that only the President of the Republic has the right to decide whether a citizen of a foreign state or a stateless person can be granted citizenship of the Republic of Lithuania by way of exception cannot be interpreted as meaning that the President of the Republic, when deciding whether to grant citizenship of the Republic of Lithuania to a citizen of a foreign state or a stateless person in recognition of merit to the Republic of Lithuania, may disregard the requirements established in the Constitution and [the law] and may clearly be partial and non-objective. Nor can the circumstance that, under [the law], the issues of granting citizenship of the Republic of Lithuania are decided by the President of the Republic at his/her discretion, be interpreted as meaning that, prior to issuing a decree on granting citizenship of the Republic of Lithuania by way of exception, the President of the Republic may apply the equal legal procedures established in the law to all persons in an unequal manner, or as meaning that, prior to issuing a decree on granting citizenship of the Republic of Lithuania, the President of the Republic does not have the duty to receive, from the institutions (their officials) preparing citizenship documents, the confirmation that all requirements established in [the law] have been fulfilled (that all procedures established in [the law] have been accomplished) and that there are not any legal obstacles to issuing the respective decree of the President of the Republic.

Any unequal application of the equal legal procedures established to all persons in the law not only places in an unequal situation the citizens of foreign states or stateless persons that seek to be granted citizenship of the Republic of Lithuania by way of exception, but also means that all persons are not equal before the state institutions or their officials that, in an unequal manner, apply the equal legal procedures established to all persons in the law. If the President of the Republic, in an unequal manner, applies the equal legal procedures established to all persons in the law, he/she derogates from the constitutional requirement to be equally just to all.

The constitutional status of the President of the Republic as the Head of State (Article 77 of the Constitution)

The Constitutional Court's conclusion of 31 March 2004

Under Article 77 of the Constitution, the President of the Republic is the Head of State; the President of the Republic represents the State of Lithuania and performs everything with which he/she is charged by the Constitution and laws. Interpreting Article 77 of the Constitution, in its rulings of 8 May 2000 and 19 June 2002, the Constitutional Court held that only one person acquires the status of the Head of State for the period defined in the Constitution, i.e. the President of the Republic who is elected by citizens of the Republic of Lithuania, and that the legal status of the President of the Republic as the Head of State is an individual one and different from that of the rest of state officials and that of the rest of citizens.

The exceptional legal status of the President of the Republic as the Head of State is revealed by various provisions of the Constitution, which establish the inviolability of the person of the President of the Republic, the prohibition on holding the President of the Republic criminally and administratively liable, the oath of the President of the Republic, his/her powers, the beginning and expiry of these powers, etc.

Under Paragraph 2 of Article 78 of the Constitution, the President of the Republic is elected for a five-year term. The powers of the President of the Republic may expire before the established time only on the grounds laid down in the Constitution. One of such grounds is when the Seimas removes the President of the Republic from office through impeachment proceedings (Item 5 of Article 88 of the Constitution).

It needs to be noted that the President of the Republic, while taking office, takes an oath to the Nation to be faithful to the Republic of Lithuania and the Constitution, to conscientiously fulfil the duties of his/her office, and to be equally just to all (Paragraph 1 of Article 82 of the Constitution). The oath of the elected President of the Republic reflects the main values enshrined in the Constitution – the Nation links such values with the office of the President of the Republic; these values are inseparable from one another; the President of the Republic, while in office, cannot deviate from the universal constitutional values of utmost importance to the Nation, which are consolidated in the oath of the President of the Republic. In its ruling of 30 December 2003, the Constitutional Court held that, from the moment of taking the oath, the duty arises for the President of the Republic to act only in such a way as he/she is obliged by the oath taken to the Nation, as well as that a breach of the oath constitutes one of the grounds established in the Constitution on the basis of which the President of the Republic may be removed from office through impeachment proceedings. In the said ruling, the Constitutional Court also held that a breach of the oath of the President of the Republic is also a gross violation of the Constitution, while a gross violation of the Constitution is also a breach of the oath.

Under Paragraph 2 of Article 77 of the Constitution, the President of the Republic represents the State of Lithuania and performs everything with which he/she is charged by the Constitution and laws. The provision of Paragraph 2 of Article 77 of the Constitution, whereby the President of the Republic performs everything with which he/she is charged by the Constitution and laws, when account is taken of the content of the oath of the President of the Republic laid down in Paragraph 1 of Article 82 of the Constitution, means that the President of the Republic, when implementing the powers established for him/her in the Constitution and laws, must follow only the Constitution and laws and must not violate them, that the President of the Republic must act only in the interests of the Nation and the state, that the President of the Republic may not act by pursuing such aims and interests that are inconsistent with the Constitution and laws, with the interests of the Nation and the state, or with public interests, that the President of the Republic

may not promote personal or group interests over those of society and the state, and that he/she may not act in the manner that would discredit state authority.

It needs to be noted that the possibility consolidated in the Constitution to remove the President of the Republic from office through impeachment proceedings is a form of public democratic control over the activities of the President of the Republic, a manner of the constitutional responsibility of the President of the Republic before the Nation, and one of the means of the self-defence of democratic civil society against the abuse of authority by the President of the Republic. Under Article 74 of the Constitution, it is permitted to institute impeachment proceedings against the President of the Republic only for a gross violation of the Constitution, a breach of the oath, or if he/she is found to have committed a crime; only the Seimas may remove the President of the Republic from office and this is done in accordance with the procedure established in the Statute of the Seimas; the President of the Republic is removed from office only if not less than 3/5 of all the members of the Seimas vote for this.

[...]

The right to criticise state institutions or officials is a right of every citizen of the Republic of Lithuania, including state officials or politicians. It is clear that the President of the Republic also has this constitutional right.

It should be noted that, as such, criticism publicly expressed by the President of the Republic with regard to state institutions or officials or a negative assessment of their decisions should not be regarded as bringing discredit on the authority of the respective state institutions or officials. While assessing whether criticism publicly expressed by the President of the Republic with regard to state institutions or officials or a negative assessment of their decisions brings discredit on such institutions or officials, account should be taken of both the content of this criticism (negative assessment) and all circumstances under which such criticism (negative assessment) was made public.

At the same time, it needs to be emphasised that the President of the Republic is the Head of State; the President of the Republic represents the State of Lithuania. The President of the Republic is one of the institutions of state power. All activities of the President of the Republic must be based on respect for the state and for its all institutions of power. The constitutional status of the President of the Republic implies that, by expressing his/her public criticism against other state institutions or their officials, the President of the Republic has the duty to avoid both opposition between the branches of power and any unreasonable disparagement or unfounded denial of decisions taken by other branches of power. The exceptional constitutional status of the President of the Republic and his/her role in the state obliges him/her to choose proper and correct forms of expressing criticism. If these requirements were disregarded, the trust of the Nation in the institution of the President of the Republic itself would be degraded and the authority of this institution would be diminished.

The constitutional status of the President of the Republic as the Head of State (Article 77 of the Constitution)

The Constitutional Court's ruling of 25 May 2004

Under Article 77 of the Constitution, the President of the Republic is the Head of State; he/she represents the State of Lithuania and performs everything with which he/she is charged by the Constitution and laws.

Interpreting Article 77 of the Constitution, in its ruling of 8 May 2000, the Constitutional Court held the following: "The status of the Head of State is acquired for the period established in the Constitution only by one person, i.e. the President of the Republic, who is elected by citizens of the Republic of Lithuania. The legal status of the President of the Republic as the Head of State is individual and different from that of all other citizens."

Under the Constitution, the legal status of the President of the Republic as the Head of State is an exceptional one and it differs from the legal status of all other state officials. The individual and exceptional constitutional legal status of the President of the Republic as the Head of State is revealed in various provisions of the Constitution, which consolidate: the inviolability of the person of the President of the

Republic; the impossibility for the President of the Republic to be a member of the Seimas, to hold another office, and to receive remuneration other than remuneration established for the President of the Republic and remuneration for creative activities; the duty for the person elected as the President of the Republic to suspend his/her activities in political parties and political organisations until the beginning of a new election campaign for the post of the President of the Republic; the requirements for candidates seeking the office of the President of the Republic; the grounds and procedure for the election of the President of the Republic; the oath of the President of the Republic; the powers of the President of the Republic, their commencement and cessation, etc. (ruling of 19 June 2002).

The Constitution lays down considerable powers for the President of the Republic as the Head of State. Part of the constitutional powers of the President of the Republic, the Head of State, is linked with the possibility of forming other institutions that exercise state power and/or exerting influence on their activities, decisions adopted by them, and on the law-making process.

For instance, the President of the Republic has the right of legislative initiative at the Seimas (Paragraph 1 of Article 68 of the Constitution). The President of the Republic signs and officially promulgates adopted laws on the alteration of the Constitution (Paragraph 1 of Article 149 of the Constitution), laws adopted by the Seimas (Paragraph 1 of Article 70 of the Constitution), as well as laws adopted by referendum (Paragraph 3 of Article 71 of the Constitution). The President of the Republic has the right to refer, on reasonable grounds, a law adopted by the Seimas back to the Seimas for reconsideration (Paragraph 1 of Article 71 of the Constitution) and may submit amendments and supplements to a law (Paragraph 2 of Article 72 of the Constitution). Under Article 84 of the Constitution, the President of the Republic decides the basic issues of foreign policy and, together with the Government, conducts foreign policy (Item 1); signs international treaties of the Republic of Lithuania and submits them to the Seimas for ratification (Item 2); on the assent of the Seimas, appoints the Prime Minister; charges the Prime Minister with forming the Government; and approves the composition of the formed Government (Item 4); on the assent of the Seimas, releases the Prime Minister from duties (Item 5); appoints and releases ministers on submission by the Prime Minister (Item 9); proposes candidates for the posts of the justices of the Supreme Court for consideration by the Seimas and, on the appointment of all the justices of the Supreme Court, proposes the candidate from among them for the post of the President of the Supreme Court to be appointed by the Seimas; appoints the judges of the Court of Appeal and, from among them, the President of the Court of Appeal, provided that the Seimas gives its assent to the candidates proposed; appoints the judges and presidents of regional and district courts and changes their places of work; in cases provided for by law, submits that the Seimas release judges from their duties; on the assent of the Seimas, appoints and releases the Prosecutor General of the Republic of Lithuania (Item 11); proposes candidates for the posts of three justices of the Constitutional Court and, on the appointment of all the justices of the Constitutional Court, proposes the candidate from among them for the post of the President of the Constitutional Court to be appointed by the Seimas (Item 12); proposes candidates for the posts of the Auditor General and the Chairperson of the Board of the Bank of Lithuania for consideration by the Seimas; may submit that the Seimas express no confidence in them (Item 13); on the assent of the Seimas, appoints and releases the Commander of the Armed Forces and the Head of the Security Service (Item 14); confers the highest military ranks (Item 15); in the event of an armed attack threatening the sovereignty of the State or its territorial integrity, adopts decisions concerning defence against the armed aggression, the imposition of martial law, as well as mobilisation, and submits these decisions for approval at the next sitting of the Seimas (Item 16); declares a state of emergency according to the procedure and in cases established by law and presents this decision for approval at the next sitting of the Seimas (Item 17); Paragraph 4 of Article 112 of the Constitution provides that the judges of district, regional, and specialised courts are appointed, and their places of work are changed, by the President of the Republic. Under Paragraph 2 of Article 140 of the Constitution, the President of the Republic is the Commander-in-Chief of the Armed Forces of the State. The President of the Republic heads the State Defence Council (Paragraph 1 of Article 140 of the Constitution).

The Constitution also lays down other considerable powers for the President of the Republic as the Head of State: the President of the Republic may call an early election to the Seimas under the conditions established in Paragraph 2 of Article 58 of the Constitution (Paragraph 2 of Article 58 of the Constitution); the President of the Republic grants citizenship of the Republic of Lithuania according to the procedure established by law (Item 21 of Article 84 of the Constitution), confers state awards (Item 22 of Article 84 of the Constitution), grants pardons to convicted persons (Item 23 of Article 84 of the Constitution), etc.

As mentioned before, under the Constitution, the President of the Republic performs everything that he/she is charged with by the Constitution and laws. Various powers of the President of the Republic are established not only in the Constitution, but also in laws, which are adopted by the Seimas.

It is clear from the said provisions of the Constitution that the President of the Republic, the Head of State, also has such constitutional powers that enable him/her to exert significant influence on other institutions exercising state power, i.e. on the Seimas, which exercises legislative power, and on the Government, an institution of executive power; the President of the Republic, the Head of State, has also considerable powers in forming the judiciary. The functioning of the other institutions of state power not inconsiderably depends on how the President of the Republic, the Head of State, implements the powers established for him/her in the Constitution.

It needs to be noted that the Constitution gives rise to the duty of the President of the Republic, as the Head of State, while exercising the powers established for him/her in the Constitution and laws, to act in such a way that harmonic interaction among the institutions exercising state power would be maintained, that the citizens of the Republic of Lithuania, the national community, could trust in the institution of the President of the Republic, the Head of State, that the State of Lithuania would be properly represented in its relationships with other countries and international organisations, that the State of Lithuania would be able to duly fulfil its international obligations, and it would be ensured that other entities of international relationships (foreign states, international organisations, etc.) could duly fulfil their obligations to the State of Lithuania. The proper performance of the said constitutional duty of the President of the Republic, the Head of State, is an essential condition for the trust of citizens in the State of Lithuania itself, as the general good of all society, and in its institutions, as well as a condition for the trust of other entities of international relationships in the State of Lithuania.

Thus, when assessing the constitutional legal status of the President of the Republic, the Head of State, it needs to be noted that this status is not only the sum of the powers *expressis verbis* established for the President of the Republic in the Constitution. The President of the Republic, as the Head of State directly elected by the Nation, symbolises the State of Lithuania and the values of its society and personifies the Republic of Lithuania in international relationships.

The constitutional powers of the President of the Republic and the guarantees established for him/her in the Constitution, as well as the constitutional legal status of the President of the Republic as the Head of State, also imply his/her special responsibility for the national community – the civil Nation.

Requirements for persons eligible to stand for the election as the President of the Republic (Paragraph 2 of Article 34 and Paragraph 1 of Article 78 of the Constitution)

See 2. The constitutional status of persons, 2.3. Political rights and freedoms, 2.3.3. The electoral rights, the ruling of 25 May 2004.

The constitutional status of the President of the Republic (as part of dual executive power)

The Constitutional Court's ruling of 13 December 2004

The foundations of the system of the institutions of executive power, as well as the powers of the supreme institutions of executive power, are established in the Constitution. The constitutional order of the State of Lithuania is based on the model of dual executive power: executive power in Lithuania is exercised by the President of the Republic – the Head of State and by the Government.

The President of the Republic is part of executive power (rulings of 10 January 1998, 21 December 1999, and 30 December 2003). Article 77 of the Constitution provides that the President of

the Republic is the Head of State (Paragraph 1); he/she represents the State of Lithuania and performs everything with which he/she is charged by the Constitution and laws (Paragraph 2). The President of the Republic, implementing the powers vested in him/her, issues acts-decrees (Article 85 of the Constitution). It should be emphasised that, under Item 2 of Article 94 of the Constitution, the Government executes, *inter alia*, the decrees of the President of the Republic.

[...]

It should be mentioned that the powers of the President of the Republic and those of the Government, as two branches of dual executive power, are autonomous and independent of each other. On the other hand, the Constitution *expressis verbis* specifies such powers of the President of the Republic and those of the Government that should be jointly implemented by the President of the Republic and the Government. For instance, Article 85 of the Constitution, *inter alia*, prescribes: “To be valid, the decrees issued by the President of the Republic for the purposes specified in Items 3, 15, 17, and 21 of Article 84 of the Constitution must be signed by the Prime Minister or an appropriate Minister.” According to Item 1 of Article 84 of the Constitution, the President of the Republic, *inter alia*, together with the Government, conducts foreign policy. It should also be noted that, while paying regard to the Constitution, the legislature may also provide, in a law, for such a legal regulation that certain state institutions would be established under the President of the Republic, the Head of State.

The social guarantees of the President of the Republic (Article 90 of the Constitution)

The Constitutional Court’s ruling of 3 July 2014

The individual and exceptional constitutional status of the President – the Head of State – includes, as its inseparable part, the constitutional social guarantees of the President.

Article 90 of the Constitution provides that the President has a residence, as well as that the financing of the President and of his/her residence is established by law. In interpreting these provisions of Article 90 of the Constitution, in its ruling of 19 June 2002, the Constitutional Court held that:

- the provisions of Article 90 of the Constitution should be interpreted by taking account of the fact that, under the Constitution, the legal status of the President is individual and different from the status of all other state officials; these constitutional provisions mean that the activities of the President are financed and his/her material and social guarantees are ensured by the state, that the funds necessary for this must be provided for in the state budget, as well as that the financing of the President and of his/her residence must be regulated by means of laws;

- the constitutional requirements that the financing of the President and of his/her residence must be established by law, as well as that it is not permitted to establish any such a legal regulation that would deny the individual legal status of the President, which is different from the legal status of all other state officials, and would create the legal preconditions for equating some other person with the President, also mean that it is not permitted to establish any such a legal regulation that would create the legal preconditions for equating some other person with a former President;

- the provisions of Article 90 of the Constitution imply that the pension of the President is an inseparable element of the financing of the President and a constitutional social guarantee of the Head of State; under the Constitution, the legislature has the duty to establish such an amount of this pension and such conditions for its granting and payment that would be in line with the dignity of the President as the Head of State and his/her individual and exceptional legal status;

- the provisions of Article 90 of the Constitution also mean that the legislature is prohibited from establishing any such a legal regulation under which a person not elected as the President could receive the pension of the President;

- the legislature may, without violating the Constitution, establish the financing of a former President by taking account of the constitutional grounds upon which the powers of the President have ceased, as well as of the fact whether the same person has not been re-elected or elected anew as the President.

Thus, the individual and exceptional constitutional status of the President differs from the legal status of all other citizens, *inter alia*, in terms of the social guarantees of the President.

It should be noted that the provisions of the official constitutional doctrine that are related to the pension of the President, as an inseparable element of the financing of the President and a constitutional social guarantee of the Head of State, are equally applicable to other state payments that are provided for by law and correspond to the essence and purpose of the pension of the President, irrespective of how they are named.

In interpreting the provision of Article 90 of the Constitution that the financing of the President and of his/her residence is established by law, it should be pointed out that this provision consolidates the guarantee of the financing of the President and of his/her residence and that the purpose of this guarantee is to ensure that the President is able to properly perform his/her duties, *inter alia*, to properly represent the State of Lithuania. Thus, this constitutional guarantee means that the legislature has the duty to establish, by means of a law, the financing necessary to perform the duties of the President, which includes not only the financing of the activities and residence of an incumbent President, but also proper financing, i.e. which is in line with the dignity and exceptional legal status of the President as the Head of State, ensured for a former President, *inter alia*, the pension of the President or another state payment corresponding to the essence and purpose of this pension. This financing also includes the funds necessary to defray the expenses of the person (spouse, another family member) who accompanies the President under the state and/or diplomatic protocol where these expenses are incurred by the said person in relation to his/her assistance to the President while the President is performing his/her duties.

... the provisions of Article 90 of the Constitution do not regulate the legal status of the spouse of the President or his/her material (social) provision after the death of the President; however, social assistance for the spouse and other family members of the President is guaranteed on the basis of other provisions of the Constitution, *inter alia*, on the basis of social assistance provided for under Article 52 of the Constitution in the event of widowhood.

6.2. THE POWERS OF THE PRESIDENT OF THE REPUBLIC

The powers of the President of the Republic to sign international treaties and to submit them to the Seimas for ratification (Item 2 of Article 84 of the Constitution)

The Constitutional Court's ruling of 17 October 1995

Item 2 of Article 84 of the Constitution provides that the President of the Republic “shall sign international treaties of the Republic of Lithuania and submit them to the Seimas for ratification”. These powers of the President of the Republic enable him/her to implement his/her general formal competence consolidated in Item 1 of Article 84 of the Constitution (“The President of the Republic: 1) shall decide the basic issues of foreign policy and, together with the Government, conduct foreign policy”). This also follows from the general status of the President of the Republic, which is established in Article 77 of the Constitution: he/she is the Head of State.

... this is not one combined power but, rather, two qualitatively independent powers: (1) to sign international treaties and (2) to submit international treaties signed either by the President of the Republic or by other authorised state officials to the Seimas for ratification. The crucial question here is whether only the President of the Republic has such rights, i.e. whether other state power institutions are prohibited from signing international treaties and submitting them to the Seimas for ratification.

The fact that the Prime Minister is entitled to sign international treaties can be derived from the constitutional provisions related to the powers of the Government in the sphere of foreign policy and international relationships. ...

[...]

The provision that the President of the Republic shall “submit them to the Seimas for ratification” of Item 2 of Article 84 of the Constitution should be assessed in a different manner. The other articles of the Constitution, whereby the competence of state power institutions is defined, do not contain any such a provision that the Government or any other state power subject is entitled to submit international treaties

to the Seimas for ratification. According to the Constitution as an integral legal act, the said right is within the prerogative of the President of the Republic.

The powers of the President of the Republic in the sphere of forming the Government

The Constitutional Court's ruling of 10 January 1998

The relationships between the President of the Republic and the Government are regulated by the norms of the Constitution that provide that the President of the Republic, on the assent of the Seimas, appoints the Prime Minister; the President of the Republic assigns the Prime Minister to form the Government and approves the composition of the formed Government. The President of the Republic, on the assent of the Seimas, releases the Prime Minister from duties; the President of the Republic accepts the powers returned by the Government after the election of a new Seimas and assigns the Government to exercise its duties until a new Government is formed, accepts the resignation of the Government and, where necessary, assigns it to continue to exercise its duties or assigns one of the ministers to exercise the duties of the Prime Minister until a new Government is formed. The President of the Republic, on the resignation of the Government or after it returns its powers, within 15 days, proposes the candidate for the post of the Prime Minister for consideration by the Seimas, etc.

... According to the constitutional tradition of Europe, the President appoints the person as the Head of the Government who is supported by the parliamentary majority. The said constitutional practice is also followed in Lithuania.

It appears from an analysis of the powers of the Seimas and those of the President of the Republic in the sphere of forming the Government that the main task of the activities of the President of the Republic in this process is to guarantee the interaction between the institutions of power. In the course of forming the Government, the President of the Republic should be bound by his/her duty to act, first of all, in such a way that an efficient Government is formed, i.e. the one that has the confidence of the Seimas.

Therefore, referring to the principles of parliamentary democracy, which are established in the Constitution, it should be presumed that the President of the Republic cannot freely choose candidates for the posts of the Prime Minister or ministers, since, in all cases, the appointment of the said officials depends on the confidence or no confidence expressed by the Seimas on this matter. At the same time, it is impossible to ignore the fact that the President of the Republic, as part of executive power, has certain possibilities of political influence on the formation of the personal structure of the Government.

[...]

After the new President of the Republic takes an oath, the powers of the former President of the Republic cease and, at the same time, the relationship of the Government ceases with the Head of State, who participated in its formation. The Constitutional Court, based on the analysis of constitutional norms, draws the conclusion that the Government must return its powers to the newly elected President of the Republic after he/she takes an oath and takes office.

... interpreting the norms of Articles 80 and 82 and Paragraph 4 of Article 92 of the Constitution, the Constitutional Court draws the conclusion that the powers of the Government should be returned to the President of the Republic on the same day when he/she takes office. This interpretation is based on the fact that the Constitution does not provide for any other time period.

[...]

After a new Seimas is elected, the President of the Republic, on the basis of Item 6 of Article 84 of the Constitution, accepts the powers returned by the Government and charges it with exercising its duties until a new Government is formed. Within 15 days, the President of the Republic proposes the candidate for the post of a new Prime Minister for consideration by the Seimas. The formation of a new Government is, thus, begun. ...

After an election of the President of the Republic, the Government also returns its powers to the newly elected President of the Republic. However, the norms of the Constitution do not prescribe that the Government must resign in such a situation. This is due to the fact that, after a new Head of State takes

office, the confidence of the Seimas in the Government remains intact. Therefore, in the case of the return of the powers after the election of a new President of the Republic, the same Government must be charged by the Head of State with continuing to exercise its functions. In the case of the resignation of the Government, the President of the Republic may charge another member of the Government with exercising the functions of the Prime Minister.

[...]

... It is clear from the analysis of the content of Articles 84, 92, and 101 of the Constitution that such a return of powers [after an election of the President of the Republic] does not imply the resignation of the Government. ... Having returned its powers, the Government remains legitimate.

The procedure for the return of powers, however, is not merely an expression of interinstitutional courtesy: it provides the President of the Republic with the possibility of verifying whether the Seimas continues to have confidence in the Government. The President of the Republic, on the basis of Article 92 and Item 8 of Article 84 of the Constitution, taking account of the tradition of parliamentary democracy, under the procedure established in Item 8 of Article 84 of the Constitution, proposes the candidate for the post of the Prime Minister of the Government that has returned its powers for consideration by the Seimas. After the Seimas approves the candidate for the post of the Prime Minister and the President of the Republic appoints the Prime Minister, and after the composition of the Government proposed by the Prime Minister is approved, the Government once again receives its powers to act, unless more than half of the ministers are replaced.

If the Seimas does not approve the candidate for the post of the Prime Minister, the Government must resign (Item 2 of Paragraph 3 of Article 101 of the Constitution). This would constitute a constitutional ground for the procedure of beginning the formation of a new Government.

The powers of the President of the Republic in forming the judiciary (Item 11 of Article 84 and Article 112 of the Constitution)

The Constitutional Court's ruling of 21 December 1999

Item 11 of Article 84 of the Constitution provides that the President of the Republic: proposes candidates for the posts of the justices of the Supreme Court for consideration by the Seimas and, upon the appointment of all the justices of the Supreme Court, proposes the candidate from among them for the post of the President of the Supreme Court to be appointed by the Seimas; appoints the judges of the Court of Appeal and, from among them, the President of the Court of Appeal, provided that the Seimas gives its assent to the candidates proposed; appoints and releases the judges and presidents of regional and district courts and changes their places of work; in cases provided for by law, submits that the Seimas release judges from their duties.

The norms of Item 11 of Article 84 of the Constitution establishing the powers of the President of the Republic in the sphere of the appointment and release of judges are linked with Paragraph 5 of Article 112 of the Constitution, wherein it is prescribed that a special institution of judges, as provided for by law, advises the President of the Republic on the appointment, promotion, and transfer of judges or their release from duties. ...

Thus, the powers of the President of the Republic in the sphere of forming the judiciary are consolidated in Item 11 of Article 84 of the Constitution. This is an important element of the constitutional status of the Head of State. Any change of or any limitation on the powers of the President of the Republic in this sphere, as well as any establishment of such a procedure for the implementation of these powers where the actions of the President of the Republic would be bound by decisions of the institutions or officials that are not provided for in the Constitution, would mean changing the constitutional competence of the President of the Republic.

[...]

... the legislature has the right to establish the subjects that must choose the candidates for the posts of judges for the President of the Republic. This function may also be established for the Minister of Justice;

however, the right of the Minister of Justice to choose the candidates for the posts of judges is not binding on the President of the Republic.

[...]

... the procedure for appointing judges as established in [the law] may not violate the independence of the judiciary. At the same time, this procedure may not violate the balance among the branches of state power (in the case at issue, the balance between the President of the Republic and the judiciary), as established in Article 5 of the Constitution.

[...]

Taking account of the procedure for the formation of courts that is established in the Constitution, as well as of the constitutional regulation of the relationships between the President of the Republic and a special institution of judges, the conclusion should be drawn that a special institution of judges, which is indicated in Paragraph 5 of Article 112 of the Constitution, must advise the President of the Republic on all questions of the appointment of judges, their professional career, as well as their release from duties. The advice given by this institution gives rise to legal effects: if this institution does not give advice, the President of the Republic may not adopt decisions on the appointment, promotion, and transfer of judges or their release from duties.

Thus, under the Constitution, such a special institution of judges not only helps the President of the Republic to form courts, but also serves as a counterbalance to the President of the Republic, who is a subject of executive power, in the sphere of forming the corps of judges. On the other hand, a special institution of judges, which is provided for in Paragraph 5 of Article 112 of the Constitution, should be interpreted as an important element of the self-governance of the judiciary, which is an independent branch of state power.

The powers of the President of the Republic related to the signing and official publication of laws

See 5. The Seimas, 5.5. The procedure of activities of the Seimas, 5.5.2. The legislation process; the ruling of 19 June 2002 (“The signing, official publication, and entry into force of laws”; “The powers of the President of the Republic, the Speaker of the Seimas, and the Deputy Speaker of the Seimas that are related to the signing and official publication of laws” (Articles 70 and 74, Item 24 of Article 84, Article 88, Paragraph 1 of Article 89, and Paragraphs 1 and 2 of Article 149 of the Constitution)).

The cessation of the powers of the President of the Republic (Article 88 of the Constitution)

The Constitutional Court’s ruling of 19 June 2002

... the list of the grounds for the cessation of the powers of the President of the Republic, which is established in Article 88 of the Constitution, is final and may not be interpreted in an expansive manner.

The constitutional right of the Speaker of the Seimas to temporarily carry out the duties of the President of the Republic (Items 3, 4, 5, and 6 of Article 88 and Paragraph 1 of Article 89 of the Constitution)

The Constitutional Court’s ruling of 19 June 2002

... the implementation of the constitutional right of the Speaker of the Seimas to temporarily carry out the duties of the President of the Republic is linked with the establishment of the particular legal fact, i.e. the establishment of one of the circumstances indicated in Paragraph 1 of Article 89 of the Constitution due to which the powers of the President of the Republic cease pursuant to Items 3, 4, 5, or 6 of Article 88 of the Constitution. In order for the legal effects to arise as pointed out in the Constitution, such a legal fact must be established by observing the proper legal procedure. The said legal fact means the following: that the act of the President of the Republic by which he/she announces his/her resignation from office has come into force (Item 3 of Article 88 of the Constitution); that the fact of the death of the President of the Republic has been established under the procedure provided for in laws (Item 4 of Article 88 of the

Constitution); that the legal act of the Seimas has come into force by which the President of the Republic is removed from office by a 3/5 majority vote of all the members of the Seimas through impeachment proceedings, which are provided for in the Statute of the Seimas (Item 5 of Article 88 and Article 74 of the Constitution); or that the resolution adopted by a 3/5 majority vote of all the members of the Seimas, by taking into consideration the conclusion of the Constitutional Court according to which the state of health of the President of the Republic does not allow him/her to hold office, has come into force (Item 6 of Article 88 and Item 2 of Paragraph 3 of Article 105 of the Constitution).

Paragraph 2 of Article 77 of the Constitution provides that the President of the Republic represents the State of Lithuania and performs everything with which he/she is charged by the Constitution and laws. Thus, the Speaker of the Seimas, if he/she temporarily holds the office of the President of the Republic under Paragraph 1 of Article 89 of the Constitution, performs everything with which the President of the Republic is charged by the Constitution and laws. Consequently, the Speaker of the Seimas has the powers to sign and officially promulgate laws passed by the Seimas within ten days of receiving them or, on reasonable grounds, to refer them back to the Seimas for reconsideration.

It needs to be noted that the Speaker of the Seimas, if he/she temporarily holds the office of the President of the Republic, exercises the constitutional powers of the President of the Republic, but not those of the Speaker of the Seimas, because the Speaker of the Seimas temporarily loses his/her powers in such a situation. ...

[...]

In the situations provided for in Paragraph 1 of Article 89 of the Constitution, the Speaker of the Seimas holds the office of the President of the Republic until a new President of the Republic is elected and enters office. After the Speaker of the Seimas begins to temporarily hold the office of the President of the Republic, the Seimas must, within 10 days, call an election of the President of the Republic, which must be held within two months; if the Seimas cannot convene and call an election of the President of the Republic, the election is called by the Government (Paragraph 1 of Article 89 of the Constitution). After the newly elected President of the Republic enters office, the temporary duties of the Speaker of the Seimas to hold the office the President of the Republic end and he/she resumes the duties of the Speaker of the Seimas At this point, it is the newly elected President of the Republic who has the right of the official promulgation of laws passed by the Seimas and the right of a delaying veto.

In addition, such legal situations are possible where, even though one of the circumstances provided for in Paragraph 1 of Article 89 of the Constitution is present, but the respective legal fact is not established yet in accordance with the proper legal procedure (thus, it has not led to the respective legal effects). In such cases, the Speaker of the Seimas, under the Constitution, may not temporarily hold the office of the President of the Republic yet; thus, he/she does not have the temporary powers of the President of the Republic to sign and officially promulgate laws passed by the Seimas within 10 days of receiving them or, on reasonable grounds, to refer them back to the Seimas for reconsideration. In this respect, in view of the circumstances indicated in Paragraph 1 of Article 89 and Items 3, 4, 5 and 6 of Article 88 of the Constitution, different legal situations are possible. For instance, if the resolution of the Seimas, adopted by taking into consideration the conclusion of the Constitutional Court and by a 3/5 majority vote of all the members of the Seimas, stating that the state of health of the President of the Republic does not allow him/her to continue to hold office has not come into force (Item 6 of Article 88 and Item 2 of Paragraph 3 of Article 105 of the Constitution), or if the act of the President of the Republic by which he/she states about his/her resignation from office has not come into force (Item 3 of Article 88 of the Constitution), or if the legal act adopted by the Seimas on removing the President of the Republic from office by a 3/5 majority vote of all the members of the Seimas through impeachment proceedings, which are provided for in the Statute of the Seimas, has not come into force (Item 5 of Article 88 and Article 74 of the Constitution), the above-mentioned powers are still exercised by the President of the Republic. Until the establishment of the fact of the death of the President of the Republic under the procedure provided for in laws (Item 4 of Article 88 of the Constitution), no one may exercise the powers of the President of the

Republic to sign and officially promulgate laws passed by the Seimas within 10 days of receiving them or, on reasonable grounds, to refer them back to the Seimas for reconsideration.

[...]

It needs to be emphasised that the phrase “the office shall temporarily be held by the Speaker of the Seimas”, which is used in Paragraph 1 of Article 89 of the Constitution, and the phrase “the Speaker of the Seimas shall substitute for”, which is used in Paragraph 2 of Article 89 of the Constitution, are not identical as far as their legal content is concerned. The phrase “the office shall temporarily be held by the Speaker of the Seimas” denotes such a legal situation where the powers of the President of the Republic have ceased, a new President of the Republic has not been elected, and the office of the President of the Republic is temporarily held by the Speaker of the Seimas; as long as he/she temporarily holds the office of the President of the Republic, the Speaker of the Seimas may not exercise his/her powers in the Seimas as the Speaker. Meanwhile, the phrase “the Speaker of the Seimas shall substitute for” denotes such a legal situation where the President of the Republic is temporarily abroad or has fallen ill and, for this reason, is temporarily unable to hold office and, due to this, the Speaker of the Seimas temporarily substitutes for the President of the Republic. While temporarily substituting for the President of the Republic, the Speaker of the Seimas retains his/her powers of the Speaker of the Seimas.

[...]

It needs to be emphasised that situations where the Speaker of the Seimas temporarily holds the office of the President of the Republic or temporarily substitutes for him/her are possible only on the grounds indicated in Paragraphs 1 and 2 of Article 89 of the Constitution; the Speaker of the Seimas is the only state official who may temporarily hold the office of the President of the Republic or temporarily substitute for the President of the Republic. Paragraph 4 of Article 89 of the Constitution prescribes that, with the exception of the cases specified in this article, the powers of the President of the Republic may not be executed by any other persons or institutions.

The constitutional right of the Speaker of the Seimas to temporarily substitute for the President of the Republic (Paragraph 2 of Article 89 of the Constitution)

The Constitutional Court's ruling of 19 June 2002

Paragraph 2 of Article 89 of the Constitution provides that the Speaker of the Seimas substitutes for the President of the Republic when the President of the Republic is temporarily abroad or falls ill and, for this reason, is temporarily unable to hold office.

It needs to be emphasised that the phrase “the office shall temporarily be held by the Speaker of the Seimas”, which is used in Paragraph 1 of Article 89 of the Constitution, and the phrase “the Speaker of the Seimas shall substitute for”, which is used in Paragraph 2 of Article 89 of the Constitution, are not identical as far as their legal content is concerned. The phrase “the office shall temporarily be held by the Speaker of the Seimas” denotes such a legal situation where the powers of the President of the Republic have ceased, a new President of the Republic has not been elected, and the office of the President of the Republic is temporarily held by the Speaker of the Seimas; as long as he/she temporarily holds the office of the President of the Republic, the Speaker of the Seimas may not exercise his/her powers in the Seimas as the Speaker. Meanwhile, the phrase “the Speaker of the Seimas shall substitute for” denotes such a legal situation where the President of the Republic is temporarily abroad or has fallen ill and, for this reason, is temporarily unable to hold office and, due to this, the Speaker of the Seimas temporarily substitutes for the President of the Republic. While temporarily substituting for the President of the Republic, the Speaker of the Seimas retains his/her powers of the Speaker of the Seimas.

The mere fact that the President of the Republic is temporarily abroad or falls ill may not serve as the sufficient constitutional grounds for the Speaker of the Seimas to temporarily substitute for the President of the Republic, because, despite fact that the President of the Republic is temporarily abroad or has fallen ill, he/she does not lose his/her legal status as the President of the Republic or the powers granted to him/her by the Constitution and laws. The Speaker of the Seimas temporarily substitutes for the President of the Republic only if there are both conditions provided for in Paragraph 2 of Article 89 of the Constitution:

(1) the President of the Republic is temporarily abroad or falls ill; (2) for this reason, he/she is temporarily unable to hold office. Both these legal facts must be established in accordance with the proper legal procedure. To establish such a procedure by means of a law is a constitutional duty of the Seimas. ...

It needs to be noted that the interpretation of the provision of Paragraph 2 of Article 89 of the Constitution as meaning that the fact that the President of the Republic is temporarily abroad or falls ill is the sufficient constitutional grounds for the Speaker of the Seimas to temporarily substitute for the President of the Republic would be constitutionally groundless. Such an interpretation of Paragraph 2 of Article 89 of the Constitution would create the preconditions for the situation where the Speaker of the Seimas who is temporarily substituting for the President of the Republic under Paragraph 2 of Article 89 of the Constitution could be seen as the Head of State, even though it is the President of the Republic who is the Head of State and the President of the Republic does not lose his/her legal status or the powers granted to him/her by the Constitution and laws even when he/she is temporarily abroad or falls ill. The President of the Republic is also the Head of State in cases where he/she is temporarily abroad or falls ill and, for this reason, is temporarily unable to hold office even though the Speaker of the Seimas is substituting for him/her at that time. Under the Constitution, even while temporarily substituting for the President of the Republic at the time when the President of the Republic is temporarily abroad or falls ill and, for this reason, is temporarily unable to hold office, the Speaker of the Seimas is not the Head of State, but the head of one of state institutions, i.e. the Seimas. In Lithuania, there is only one Head of State – the President of the Republic.

While temporarily substituting for the President of the Republic under Paragraph 2 of Article 89 of the Constitution, differently from the situation where he/she temporarily holds the office of the President of the Republic under Paragraph 1 of Article 89 of the Constitution, the Speaker of the Seimas may not exercise certain powers of the President of the Republic that are *expressis verbis* specified in the Constitution: Paragraph 3 of Article 89 of the Constitution provides that, while temporarily substituting for the President of the Republic, the Speaker of the Seimas may neither call an early election to the Seimas nor appoint or release ministers without the consent of the Seimas. Paragraph 3 of Article 89 of the Constitution also establishes a special guarantee for the Speaker of the Seimas temporarily substituting for the President of the Republic: during the said period, the Seimas may not consider the issue of no confidence in the Speaker of the Seimas.

It needs to be emphasised that situations where the Speaker of the Seimas temporarily holds the office of the President of the Republic or temporarily substitutes for him/her are possible only on the grounds indicated in Paragraphs 1 and 2 of Article 89 of the Constitution; the Speaker of the Seimas is the only state official who may temporarily hold the office of the President of the Republic or temporarily substitute for the President of the Republic. Paragraph 4 of Article 89 of the Constitution prescribes that, with the exception of the cases specified in this article, the powers of the President of the Republic may not be executed by any other persons or institutions.

The veto right of the President of the Republic (Paragraph 1 of Article 71 of the Constitution)

The Constitutional Court's ruling of 19 June 2002

The President of the Republic ... has the right not to sign a law adopted by the Seimas and, within ten days of receiving such a law, on reasonable grounds, to refer it back to the Seimas for reconsideration (Paragraph 1 of Article 71 of the Constitution), i.e. he/she has the right of a delaying veto. The Constitution does not provide that the President of the Republic has the right of a delaying veto in connection with laws passed by referendum or in connection with laws amending the Constitution. Under the Constitution, the President of the Republic has such a right only with regard to laws adopted by the Seimas, with the exception of laws amending the Constitution. While implementing the right of a delaying veto, the President of the Republic may also submit proposals how a law adopted by the Seimas, but not yet signed by the President of the Republic, should be amended or supplemented.

[...]

Under Article 85 of the Constitution, the President of the Republic, implementing the powers vested in him/her, issues acts-decrees. Under Paragraph 1 of Article 71 of the Constitution, when referring a law passed by the Seimas, within ten days of receiving such a law, back to the Seimas for reconsideration, the President of the Republic must indicate, in his/her decree, the relevant reasons why the law was referred back to the Seimas. Meanwhile, to propose draft amendments and supplements to a law referred back to the Seimas for reconsideration is not a constitutional duty of the President of the Republic, but his/her constitutional right.

The powers of the President of the Republic in the legislative process

The Constitutional Court's ruling of 22 February 2008

Under the Constitution, in addition to the Seimas, the President of the Republic also takes part in the legislative process. For instance, the President of the Republic signs and officially announces (promulgates) laws enacted by the Seimas and also has the right of a delaying (relative) veto, i.e. the powers to refer a law adopted by the Seimas back to the Seimas for reconsideration; this is an important aspect of the constitutional principle of the separation of powers and an additional guarantee for the constitutionality of laws adopted by the Seimas (rulings of 19 January 1994 and 19 June 2002). The President of the Republic has the right not to sign a law adopted by the Seimas and, within ten days of receiving such a law, on reasonable grounds, to refer it back to the Seimas for reconsideration (Paragraph 1 of Article 71 and Item 2 of Article 84 of the Constitution); the respective decree of the President of the Republic must specify the reasons why such a law was referred back to the Seimas (Paragraph 1 of Article 71 and Article 85 of the Constitution); the Seimas may consider anew and adopt a law referred back by the President of the Republic (Paragraph 1 of Article 72 of the Constitution); the law reconsidered by the Seimas is deemed adopted if the amendments and supplements submitted by the President of the Republic are adopted, or if more than 1/2 of all the members of the Seimas vote for the law or, in cases where such a law is a constitutional law, if not less than 3/5 of all the members of the Seimas vote in favour thereof (Paragraph 2 of Article 72 of the Constitution); the President of the Republic must sign such laws within three days and promulgate them immediately (Paragraph 3 of Article 72 of the Constitution).

In its ruling of 19 June 2002, when interpreting the constitutional powers of the President of the Republic in the legislative process, the Constitutional Court held that it is the constitutional duty of the President of the Republic to perform, within ten days of receiving a law passed by the Seimas, one legal action from among those specified in Paragraph 1 of Article 71, Item 24 of Article 84, and Paragraph 2 of Article 71 of the Constitution: either to sign and officially promulgate a law passed by the Seimas (right of promulgation) or, on reasonable grounds, to refer it back to the Seimas for reconsideration (right of a delaying veto). In the said ruling of the Constitutional Court, a situation is discussed in more detail where the President of the Republic, even though he/she has the constitutional duty within ten days of receiving a law passed by the Seimas to sign and officially promulgate it (right of promulgation) or, on reasonable grounds, to refer such a law back to the Seimas for reconsideration (the right of delaying veto), due to some reasons, neither signs and officially promulgates the said law passed by the Seimas nor makes use of the right of a delaying veto.

The veto right of the President of the Republic (Paragraph 1 of Article 71 of the Constitution)

(on the powers of the Seimas that are related to adopting a law vetoed by the President of the Republic, see 5. The Seimas, 5.5. The procedure of activities of the Seimas, 5.5.2. The legislation process)

The Constitutional Court's ruling of 22 February 2008

When interpreting the provision “Within ten days of receiving a law adopted by the Seimas, the President of the Republic ... shall, upon reasonable grounds, refer it back to the Seimas for reconsideration” of Paragraph 1 of Article 71 of the Constitution, it needs to be noted that the President of the Republic may, in the respective decree, specify various grounds – not only legal, but also economic, political, moral, those of expediency, or those that are related to the international obligations of the State of Lithuania, etc. ... these grounds do not necessarily have to be linked with the content of the respective law;

they may, in the opinion of the President of the Republic, be also linked with the infringements committed during the procedure of adopting the said law, *inter alia*, with the fact that, while adopting that law, the Seimas did not follow the stages of the legislation process or the rules of legislation that are laid down in the Constitution and/or the Statute of the Seimas. In such cases, the President of the Republic, while making use of the right of a delaying veto, which is granted to him/her by the Constitution, does not allow such a law to take effect where, in his/her opinion, the said law may be in conflict with the procedure, laid down in the Constitution, for adopting it.

It needs to be emphasised that the reasons of the President of the Republic, on the basis of which a law adopted by the Seimas is referred back to it for reconsideration, must be rational, clear, and comprehensible. The President of the Republic, while referring, on reasonable grounds, a law back to the Seimas for reconsideration, must follow the imperatives of the welfare of the Nation, responsible governance, civic consciousness, social harmony, justice, the supremacy of law, as well as other values, which are consolidated, defended, and protected by the Constitution. However, the mere fact that the reasons of the President of the Republic, on the basis of which a law adopted by the Seimas is referred back to it for reconsideration, could be assessed by someone (*inter alia*, members of the Seimas) as unfair, may not be a pretext for questioning the constitutionality of the respective decree of the President of the Republic (or for questioning such constitutionality by initiating a constitutional justice case at the Constitutional Court).

In this context, it needs to be emphasised that, if the Seimas does not agree with the reasons of the President of the Republic on the basis of which a certain law adopted by the Seimas is referred back to it for reconsideration after the President of the Republic uses his/her constitutional right of a delaying veto, the Seimas, under Paragraph 2 of Article 72 of the Constitution, may override such a veto of the President of the Republic. Under the Constitution, the veto exercised by the President of the Republic as regards laws adopted by the Seimas is relative; such a veto is not absolute.

While making use of the right of a delaying veto, the President of the Republic may also submit proposals to the Seimas how a law adopted by the Seimas, but not yet signed by the President of the Republic, should be amended or supplemented; such amendments or supplements have to be specified in the decree of the President of the Republic whereby a law adopted by the Seimas is, on reasonable grounds, referred back to the Seimas for reconsideration. The Constitutional Court has held that to propose draft amendments and supplements to a law referred back to the Seimas for reconsideration is not a constitutional duty of the President of the Republic, but his/her constitutional right (ruling of 19 June 2002).

A different interpretation, i.e. the interpretation that, purportedly, the President of the Republic, while referring, on reasonable grounds, a law adopted by the Seimas back to the Seimas for reconsideration, must, in all cases, submit proposals to the Seimas on how this law should be amended or supplemented, would mean that the President of the Republic is forced to propose amendments and supplements even to such laws of which he/she does not approve in general and to which he/she objects not because of the fact that those laws include certain provisions with which the President of the Republic does not agree and which, in his/her opinion, should be modified, but because of the fact that, in the opinion of the President of the Republic, the said law as such is inadmissible in principle as it is inexpedient, unreasonable, harmful, etc. When the President of the Republic does not submit any amendments or supplements to a law that is referred, on reasonable grounds, back to the Seimas for reconsideration, he/she does not act *ultra vires*.

The powers of the President of the Republic in forming the judiciary (Item 11 of Article 84 and Article 112 of the Constitution) (on the formation of courts, see 9.1. Courts, 9.1.4. The constitutional status of judges. The appointment of judges, their professional career, and their release from duties. The judicial self-governance institutions)

The Constitutional Court's decision of 15 May 2009

The Constitution establishes such a procedure of the appointment and release of the judges and presidents of courts of general jurisdiction and specialised courts of various levels whereby the judges and presidents of the said courts are appointed and released by the institutions of other branches of state power –

executive power and legislative power; thus, they are appointed and released, respectively, by the President of the Republic and the Seimas, i.e. the institutions that are formed on a political basis.

In its rulings of 21 December 1999, 9 May 2006, and 27 November 2006, the Constitutional Court held the following: the powers of the President of the Republic consolidated in Item 11 of Article 84 of the Constitution regarding the formation of the judiciary are a significant element of the constitutional status of the Head of State; changing or limiting the specified powers of the President of the Republic in this sphere, as well as the establishment of such a procedure for implementing these powers so that the President of the Republic would be bound by decisions adopted by the institutions or officials that are not provided for in the Constitution, would mean changing the constitutional competence of the President of the Republic. Also, any change in or restriction on the powers of a special institution of judges, which is provided for by law and is specified in Paragraph 5 of Article 112 of the Constitution, to advise the President of the Republic on the appointment, promotion, and transfer of judges or their release from duties would mean a change in the purpose (stemming from the Constitution itself) of a special institution of judges, which is provided for by law and is specified in Paragraph 5 of Article 112 of the Constitution (rulings of 9 May 2006 and 27 November 2006).

The President of the Republic participates (in the ways established in Paragraphs 2, 3, and 4 of Article 112 and Item 11 of Article 84 of the Constitution) in appointing and releasing the judges of courts of general jurisdiction of all levels: from the lowest level – district courts to the highest level – the Supreme Court (also in appointing and releasing the judges of all specialised courts); however, the powers of the President of the Republic with respect to the judges of different courts of general jurisdiction are different. The judges and presidents of district, regional, and specialised courts are appointed and released by the President of the Republic and, regarding this, he/she does not apply to the Seimas. Item 11 of Article 84 of the Constitution provides, *inter alia*, that the President of the Republic: proposes candidates for the posts of the justices of the Supreme Court for consideration by the Seimas and, on the appointment of all the justices of the Supreme Court, proposes the candidate from among them for the post of the President of the Supreme Court to be appointed by the Seimas; appoints the judges of the Court of Appeal and, from among them, the President of the Court of Appeal, provided that the Seimas gives its assent to the candidates proposed; appoints the judges and presidents of regional and district courts and changes their places of work; in cases provided for by law, submits that the Seimas release judges from their duties.

As noted in the Constitutional Court's rulings of 9 May 2006 and 21 September 2006, in order to appoint or release a judge or the President of the Court of Appeal, the President of the Republic must apply to the Seimas and, if the Seimas gives its assent, he/she may appoint a certain person as a judge or the President of the Court of Appeal or release a certain judge or the President of the Court of Appeal from duties; also, *inter alia*, if certain circumstances significant for such appointment or release from duties come to light, he/she might decide not to appoint that person as a judge or the President of the Court of Appeal and to propose another candidate to the Seimas, or not to release a certain judge or the President of the Court of Appeal from duties (if it is not obligatory to release that judge from duties under the Constitution).

Paragraph 5 of Article 112 of the Constitution provides that a special institution of judges, as provided for by law, advises the President of the Republic on the appointment, promotion, and transfer of judges or their release from duties.

The Constitutional Court interprets the aforesaid special institution of judges, which is provided for in the Constitution, as an important element of the self-governance of the judiciary, which is an independent branch of state power; in the regulation of the relationships linked with the appointment, promotion, and transfer of judges or their release from duties, it is not allowed to deny the competence of the indicated special institution of judges or its constitutional nature and purpose; in the area of the formation of the corps of judges, this special institution of judges is a counterbalance to the President of the Republic as a subject of executive power (rulings of 21 December 1999, 13 December 2004, and 9 May 2006). The fact that the judiciary is fully fledged, autonomous, and independent, as well as the constitutional principle of the separation of powers, makes it impossible to interpret the constitutional purpose and functions of the

said special institution of judges in such a way that its role as a counterbalance to the President of the Republic in the area of the formation of the corps of judges would be denied or ignored (ruling of 9 May 2006).

[...]

... Article 115 of the Constitution also provides for such grounds for releasing a judge from duties that are linked with facts of an objective nature, but not with the free decision of such a judge, as, for instance, the expiry of the term of powers of a judge for which he/she was appointed to hold the office of a judge or that of the president of a certain court. When there is such a constitutional ground for releasing a justice or the President of the Supreme Court from duties, the President of the Republic must ascertain whether the said fact of an objective nature really exists, i.e. whether the term of powers of the justice or the President of the Supreme Court, as established by law, has expired and, if the term of powers has expired, the President of the Republic must apply to a special institution of judges, which is provided for in Paragraph 5 of Article 112 of the Constitution, in order that this institution would advise him/her on releasing such a justice or the President of the Supreme Court from duties, because the term of powers of the said justice or the President of the Supreme Court has expired. In its turn, however, the said special institution of judges must ascertain whether the said fact of an objective nature really exists (i.e. whether the term of powers of a justice or the President of the Supreme Court, as established by law, has expired), and, if such a fact exists, it must advise the President of the Republic to release the justice or the President of the Supreme Court from duties. On receiving such an advice from the aforementioned special institution of judges, the President of the Republic must submit that the Seimas release the person concerned from duties.

The powers of the President of the Republic to appoint state officials and to release them from duties (Item 10 of Article 84 of the Constitution)

The Constitutional Court's ruling of 13 May 2010

Item 10 of Article 84 of the Constitution provides that the President of the Republic shall, according to the established procedure, appoint and release state officials provided for by law.

... the powers of the President of the Republic that are consolidated in Item 10 of Article 84 of the Constitution mean that the legislature is allowed to determine which state officials are appointed and released by the President of the Republic; in addition, the said powers of the President of the Republic mean that the legislature must establish the grounds for appointing such officials and releasing them from duties. Under Item 10 of Article 84 of the Constitution, the requirements (*inter alia*, the requirements of an ethical and moral nature) for the state officials who are appointed by the President of the Republic must be established in laws: the reputation of state officials must be impeccable; the conduct of state officials, both related to the direct performance of their duties and related to their activities not connected with their duties, must not discredit the name of state officials and the authority of a state institution wherein they perform their duties.

It needs to be held that the President of the Republic, while implementing the powers consolidated in Item 10 of Article 84 of the Constitution to appoint state officials provided for by law, may choose (by following the requirements set out in laws for state officials who are appointed by him/her) which person should be appointed as a state official; meanwhile, on a proposal, according to the established procedure, from certain institutions or officials that a certain person be appointed as a state official, the President of the Republic may decide whether the said person is suitable for the respective office of a state official in cases where a law prescribes that the President of the Republic appoints individuals to such office. The legislature, while establishing the grounds for releasing the said state officials from duties, must pay regard to the constitutional principle of a state under the rule of law, whereby, *inter alia*, state officials who violate the Constitution and laws, who raise personal or group interests above public interests, and discredit state power by their actions must be held legally liable in accordance with the procedure established by law. The Constitution does not tolerate any such legal and factual situations where those state officials and other persons adopting decisions important to society and the state who, in accordance with the established procedure, are declared not to have avoided a conflict between public and private interests or who are

declared to have acted by seeking objectives incompatible with public interests, have raised personal or group interests above the interests of society and the state, and have discredited the name of officials by their actions, would not be held legally liable, *inter alia*, would not be released from duties.

Item 10 of Article 84 of the Constitution also means that the President of the Republic, while appointing and releasing the state officials that are provided for by law, must comply with the grounds laid down in laws for releasing state officials from duties and with the procedure, established in laws and/or other legal acts, for appointing state officials and releasing them from duties. The same requirements also arise from Paragraph 2 of Article 5 of the Constitution, wherein it is prescribed that the scope of powers is limited by the Constitution, from Paragraph 2 of Article 77 of the Constitution, wherein it is prescribed, *inter alia*, that the President of the Republic performs everything with which he/she is charged by the Constitution and laws, as well as from the constitutional principle of a state under the rule of law, which implies the hierarchy of legal acts.

The powers of the President of the Republic to confer state awards (Item 22 of Article 84 of the Constitution) (for more on state awards, see 4. The state and its institutions, 4.5. State awards)

The Constitutional Court's ruling of 7 September 2010

The foundations of the constitutional institution of state awards are consolidated, *inter alia*, in ... Item 22 of Article 84 of the Constitution.

[...]

Item 22 of Article 84 of the Constitution provides that the President of the Republic confers state awards.

When interpreting the power of the President of the Republic to confer state awards, which is consolidated in Item 22 of Article 84 of the Constitution, in conjunction with the provisions “The President of the Republic, implementing the powers vested in him, shall issue acts-decrees. To be valid, the decrees issued by the President of the Republic for the purposes specified in Items 3, 15, 17, and 21 of Article 84 of the Constitution must be signed by the Prime Minister or an appropriate Minister” of Article 85 of the Constitution, it needs to be held that, under the Constitution, the President of the Republic confers state awards (which are established by means of a law passed by the Seimas) by issuing decrees, whose power is not bound by the approval of the Prime Minister or the respective minister.

The content of the constitutional institution of state awards is revealed to a certain extent in the Constitutional Court's ruling of 12 May 2006. *Inter alia*, the following is held in the said ruling of the Constitutional Court:

[...]

– conferring a certain state award is not the implementation of a right or legitimate expectation of a person, even if he/she is of undoubted merit to Lithuania, but rather such an assessment of his/her merit where the said assessment is within the discretion of and depends on the will of the President of the Republic;

– the President of the Republic has rather broad freedom of the discretion to decide whether or not to award a proposed person. It should be stressed that the Constitution does not oblige the President of the Republic to confer a certain state award on a certain person or persons (in recognition of their certain merit); however, when conferring state awards, the President of the Republic must pay regard, *inter alia*, to the requirements for fulfilling conscientiously the duties of his/her office and for being equally just to all, as established in Article 82 of the Constitution.

... the constitutional institution of state awards is related to a certain extent with the power of the President of the Republic, which is consolidated in Item 1 of Article 84 of the Constitution, to decide the basic issues of foreign policy.

As held in the Constitutional Court's ruling of 12 May 2006, according to international customs, the diplomatic protocol, i.e. according to the established international practice, state awards can be conferred on citizens of foreign states (*inter alia*, on Heads of States and high-ranking officials) by paying a special

tribute to their state and to them and by seeking to develop mutually beneficial relationships between Lithuania and other states.

[...]

... the legislature, when establishing the procedure for how submissions are made that persons be conferred state awards, cannot deny the power of the President of the Republic, which is consolidated in Item 22 of Article 84 of the Constitution, to confer state awards.

The legislature, in regulating the relationships connected with the procedure for conferring state awards, *inter alia*, when consolidating the powers of the respective subjects (*inter alia*, ministers) to submit (present) that certain persons be awarded state awards, or when establishing the procedure for the consideration of the issues of conferring state awards in certain institutions, may not establish any such a legal regulation that would deny the power of the President of the Republic, which stems from Item 22 of Article 84 of the Constitution, to confer state awards.

Any change of or any limitation on the powers of the President of the Republic in this sphere, as well as any establishment of such a procedure for the implementation of these powers whereby the actions of the President of the Republic would be bound by decisions of the institutions or officials that are not provided for in the Constitution, would mean changing the constitutional competence of the President of the Republic.

[...]

... the President of the Republic, when he/she confers state awards, is also bound by the constitutional principle of responsible governance.

[...]

... the President of the Republic, when implementing the power to confer state awards, which is consolidated in Item 22 of Article 84 of the Constitution, and when, due to this, issuing a decree, is bound by the requirement, arising from the constitutional principle of a state under the rule of law, that, *inter alia*, it is allowed to confer only such state awards that are established by means of a law.

The powers of the President of the Republic in the sphere of national defence (Item 16 of Article 84 and Paragraph 2 of Article 142 of the Constitution); the powers of the President of the Republic as the Commander-in-Chief of the Armed Forces of the State (Paragraph 2 of Article 140 of the Constitution) (for more on national defence, see 13. Foreign policy and national defence, 13.2. National defence)

The Constitutional Court's ruling of 15 March 2011

Article 84 of the Constitution consolidates the list of the constitutional powers of the President of the Republic; Item 16 of this article provides that “The President of the Republic ... shall, in the event of an armed attack threatening the sovereignty of the State or its territorial integrity, adopt decisions concerning defence against the armed aggression, the imposition of martial law, as well as mobilisation, and submit these decisions for approval at the next sitting of the Seimas”.

The powers of the President of the Republic consolidated in Item 16 of Article 84 of the Constitution are particularised in Paragraph 2 of Article 142 of the Constitution, wherein it is established: “In the event of an armed attack threatening the sovereignty of the State or its territorial integrity, the President of the Republic shall immediately adopt a decision on defence against the armed aggression, impose martial law throughout the State or in its separate part, or announce mobilisation, and submit these decisions for approval at the next sitting of the Seimas, or immediately convene an extraordinary session in the period between sessions of the Seimas. The Seimas shall approve or overrule the decision of the President of the Republic.”

... under the legal regulation established in Paragraph 2 of Article 142 of the Constitution, in the event of an armed attack that threatens the sovereignty of the state or its territorial integrity, a decision immediately adopted by the President of the Republic on defence against the armed aggression, on the imposition of martial law throughout the state or in its separate part, or on the announcement of mobilisation acquires legal force from the moment of its adoption; however, the President of the Republic must submit

this decision for approval at the next sitting of the Seimas (in the period between sessions of the Seimas, an extraordinary session of the Seimas must immediately be convened for this purpose), whereas the Seimas has the right to approve or overrule the decision of the President of the Republic.

In this context, it needs to be noted that Paragraph 2 of Article 140 of the Constitution, wherein it is prescribed that the President of the Republic is the Commander-in-Chief of the Armed Forces of the State, gives rise to the specific constitutional powers of the President of the Republic that are related, *inter alia*, with those established in Paragraph 2 of Article 142 of the Constitution. Under the Constitution, *inter alia*, the provision of Paragraph 2 of Article 5 thereof, whereby the scope of powers is limited by the Constitution, these specific constitutional powers of the President of the Republic, as the Commander-in-Chief of the Armed Forces of the State, may not be granted to any other subject by means of a law or another legal act.

Under Paragraph 2 of Article 77 of the Constitution, the President of the Republic performs everything with which he/she is charged by the Constitution and laws.

Thus, the list of the constitutional powers of the President of the Republic, as consolidated in Article 84 of the Constitution, is not a final one.

Consequently, the legislature may also establish such powers of the President of the Republic that, though not *expressis verbis* specified in the Constitution, are in line with the constitutional legal status of the President of the Republic as the Commander-in-Chief of the Armed Forces of the State.

[...]

... under the Constitution, *inter alia*, Article 140 thereof, in the course of deliberating and deciding on national defence issues, various state institutions and officials take part, *inter alia*, the State Defence Council, which considers and coordinates the main issues of state defence (and which consists of the President of the Republic, the Prime Minister, the Speaker of the Seimas, the Minister of National Defence, and the Commander of the Armed Forces), as well as the Government, the Minister of National Defence, and the Commander of the Armed Forces, who are responsible to the Seimas for managing and commanding the armed forces of the state; however, decisions on the main issues of national defence are taken by two state institutions: the Seimas and the President of the Republic. The Seimas is empowered to adopt final decisions on the imposition of martial law, on the announcement of mobilisation and demobilisation, and on the adoption of the decision to use the armed forces when the need arises to defend the Homeland or to fulfil the international obligations of the State of Lithuania; whereas the President of the Republic, in the event of an armed attack threatening the sovereignty of the state or its territorial integrity, has the powers to immediately adopt such decisions (concerning defence against the armed aggression, the imposition of martial law throughout the state or in its separate part, and the announcement of mobilisation) that are submitted for approval at the next sitting of the Seimas.

[...]

... laws may not establish any such powers of the President of the Republic that would deny the constitutional powers of other state institutions ...

[...]

... when the law provides for ensuring the independence and security of the state on the international scale (level), it is necessary to pay regard, *inter alia*, to the rule, established in Article 142 of the Constitution, according to which two state institutions are constitutionally empowered to adopt decisions on the main issues of national defence, i.e. the Seimas adopts final decisions, whereas the President of the Republic immediately (in the event of a threat) adopts such decisions that are submitted for approval at the next sitting for the Seimas. While paying regard to this rule of the delimitation and coordination of the powers of the Seimas and the President of the Republic in the area of national defence, which is consolidated in Article 142 of the Constitution, the legislature, under Paragraph 2 of Article 140 of the Constitution, wherein it is stipulated that the President of the Republic is the Commander-in-Chief of the Armed Forces of the State, may also establish a legal regulation under which the President of the Republic would be empowered to immediately adopt a decision on defence against armed aggression not only in the event of an armed attack threatening the sovereignty of the state or its territorial integrity, as provided for

in Item 16 of Article 84 and Paragraph 2 of Article 142 of the Constitution, but also in the event (as provided for in a collective defence treaty ratified by the Seimas) of an armed attack against the Republic of Lithuania and a state that is its ally in cases where such a decision must immediately be submitted for approval at the next sitting of the Seimas.

6.3. THE LEGAL ACTS OF THE PRESIDENT OF THE REPUBLIC

The legal acts of the President of the Republic and the countersigning of such acts (Article 85 of the Constitution)

The Constitutional Court's ruling of 30 December 2003

The phrase “the decrees issued by the President of the Republic” of the provision “To be valid, the decrees issued by the President of the Republic” of Article 85 of the Constitution means that a decree issued by the President of the Republic becomes a legal act only after it is signed by the President of the Republic. As long as the President of the Republic has not done so, there are no legal grounds for stating that the President of the Republic has issued a decree. As long as a document entitled as a decree of the President of the Republic has not been signed, such a document is only a draft decree of the President of the Republic, but not a decree itself. It needs to be noted that the Constitution does not provide that the draft decrees of the President of the Republic could and should be signed by the Prime Minister or a certain minister before such draft decrees are signed by the President of the Republic. If laws or other legal acts established such a legal regulation under which the draft decrees of the President of the Republic must be signed by the Prime Minister or a minister before they are signed by the President of the Republic, the legal acts establishing such a legal regulation would be in conflict with the Constitution.

Thus, under Article 85 of the Constitution, the Prime Minister or an appropriate minister signs decrees issued by the President of the Republic, i.e. legal acts entitled as the decrees of the President of the Republic that have already been signed by the President of the Republic.

The provision “To be valid, the decrees issued by the President of the Republic ... must be signed by the Prime Minister or an appropriate Minister” of Article 85 of the Constitution means that, as long as a decree of the President of the Republic of Lithuania is not signed by the Prime Minister or an appropriate minister, such a decree cannot come into force; thus, such a decree cannot give rise to any legal effects.

Consequently, the said provision of Article 85 of the Constitution establishes an additional condition under which the decrees of the President of the Republic specified in Items 3, 15, 17, and 21 of Article 84 of the Constitution can give rise to legal effects: such decrees must be signed by the Prime Minister or an appropriate minister. In the legal theory, such signing is called countersigning.

Paragraph 1 of Article 5 of the Constitution, which provides which state institutions execute state power, also indicates that “the President of the Republic and the Government” execute state power. Under the Constitution, the President of the Republic is part of executive power (ruling of 10 January 1998). Article 84 of the Constitution and other articles of the Constitution provide for various powers of the President of the Republic. Implementing such powers, the President of the Republic issues decrees. Most of the decrees issued by the President of the Republic, under the Constitution, are not signed by the Prime Minister or a minister: under the Constitution, the Prime Minister or an appropriate minister signs only the decrees specified in Items 3, 15, 17, and 21 of Article 84 of the Constitution. Such a constitutional regulation means that the powers of the President of the Republic that are specified in Items 3, 15, 17, and 21 of Article 84 of the Constitution are considered an especially important area of executive power; therefore, under the Constitution, the President of the Republic alone cannot exercise the said powers without the approval of an appropriate member of the Government. Such a constitutional regulation reflects the consolidation of the system of “checks and balances” in the implementation of executive power.

While revealing the content of the provision “To be valid, the decrees issued by the President of the Republic for the purposes specified in Items 3, 15, 17, and 21 of Article 84 of the Constitution must be signed by the Prime Minister or an appropriate Minister”, it should be noted that it is impossible to interpret

the said provision in isolation from another provision established in the same article, i.e. the provision “Responsibility for such a decree shall lie with the Prime Minister or the Minister who signs it”.

In view of the fact that responsibility for the decrees issued by the President of the Republic for the purposes specified in Items 3, 15, 17, and 21 of Article 84 of the Constitution lies with the Prime Minister or the minister who signed it, the conclusion should be drawn that, under Article 85 of the Constitution, the Prime Minister or an appropriate minister has the right to decide whether or not to sign a certain decree of the President of the Republic. The Prime Minister or an appropriate minister is not obliged to sign such a decree that is issued in disregard of the Constitution or in failure to follow the procedure established in the respective laws or other established requirements; otherwise, the Prime Minister or an appropriate minister would be responsible for actions that he/she would have to perform without having any choice, i.e. irrespective of his/her will. The aforesaid legal regulation is not allowed in a democratic state under the rule of law, since it would not be in line with the principles of a state under the rule of law and justice, on which the Lithuanian Constitution and the entire Lithuanian legal system are based.

The right and duty of the Prime Minister or an appropriate minister to decide whether or not to sign the decrees issued by the President of the Republic for the purposes specified in Items 3, 15, 17, and 21 of Article 84 of the Constitution give rise to the duty of the Prime Minister or an appropriate minister, before they sign such a decree of the President of the Republic, to ascertain whether this decree of the Republic of Lithuania has been issued according to the Constitution and in line with the procedure established in the respective laws and other established requirements. It is because of the said duty of the Prime Minister or an appropriate minister that responsibility for such a decree of the President of the Republic lies, under Article 85 of the Constitution, with the Prime Minister or an appropriate minister.

Thus, the legal regulation established in Article 85 of the Constitution, according to which, to be valid, the decrees issued by the President of the Republic for the purposes specified in Items 3, 15, 17, and 21 of Article 84 of the Constitution must be signed by the Prime Minister or an appropriate minister, consolidates the right and duty of the Prime Minister and an appropriate minister to participate in the implementation of the powers of the President of the Republic that are specified in Items 3, 15, 17, and 21 of Article 84 of the Constitution, as well as the right and duty of the Prime Minister and an appropriate minister to ensure that such a decree of the President of the Republic that has been issued in disregard of the Constitution or the requirements established in laws and the established procedure would not come into force. This is a counterbalance to the decisions of the President of the Republic in cases where such decisions disregard the requirements set in the Constitution and laws and where the powers of the President of the Republic, which are established in the Constitution and laws, are abused. On the other hand, the fact that responsibility for a decree of the President of the Republic lies not with the President of the Republic himself/herself, but with the Prime Minister or an appropriate minister, is based on the provision that the President of the Republic, while in office, is not responsible for his/her decisions, save the cases directly established in the Constitution, i.e. for such decisions by which the President of the Republic grossly violates the Constitution, breaches the oath, or commits a crime. In such cases, the issue of the constitutional responsibility of the President of the Republic is decided (Article 74 of the Constitution).

[...]

It needs to be noted that the legal regulation established in Article 85 of the Constitution gives rise to the duty of [the respective minister] to ascertain, before signing a decree of the President of the Republic on granting citizenship or a decree of the President of the Republic on granting citizenship by way of exception, whether such a decree of the President of the Republic has been issued by paying regard to the Constitution and on the grounds for citizenship acquisition that are established in [the law] and in compliance with the procedure for granting citizenship, as established in [the law]. Under Article 85 of the Constitution, responsibility for such a decree of the President of the Republic lies with [the minister] who has signed it.

[...]

In view of the fact that, under Articles 86 and 74 of the Constitution, the President of the Republic who grossly violates the Constitution or breaches his/her oath, or is found to have committed a crime, may

be held constitutionally liable – he/she may be removed from office through impeachment proceedings, the conclusion should be drawn that the provision “Responsibility for such a decree shall lie with the Prime Minister or the Minister who signs it” of Article 85 of the Constitution cannot be interpreted as meaning that the President of the Republic is not responsible in all cases for the decrees issued by him/her for the purposes specified in Items 3, 15, 17, and 21 of Article 84 of the Constitution where the said decrees were signed by the Prime Minister or an appropriate minister.

When Articles 85, 86, and 74 of the Constitution are interpreted in a systemic manner, the conclusion should be drawn that responsibility for a decree specified in Items 3, 15, 17, and 21 of Article 84 of the Constitution in cases where, by such a decree, Constitution is grossly violated, or the oath is breached, or a crime is committed lies not only with the Prime Minister or the minister that countersigned such a decree, but also with the President of the Republic who has issued such a decree.

At the same time, it should be noted that, as such, the mere fact that a certain decree of the President of the Republic is declared in conflict with the Constitution or a law does not mean that the President of the Republic has grossly violated the Constitution, or breached the oath, or committed a crime. Deciding whether the President of the Republic, having issued a decree that is in conflict with the Constitution or a law, has grossly violated the Constitution, or breached the oath, or committed a crime, it is necessary to assess not only the content of the decree of the President of the Republic, but also whether, in the course of issuing the decree of the President of the Republic, the requirements established in the Constitution and the relevant laws were fulfilled and whether the established procedure was followed; in addition, it is also necessary to assess other factual circumstances surrounding the issuance of such a decree.

[...]

Legal acts passed by the President of the Republic are substatutory legal acts; therefore, they, as all other substatutory legal acts, may not be in conflict with the Constitution, constitutional laws, and laws.

7. THE GOVERNMENT

7.1. THE CONSTITUTIONAL STATUS OF THE GOVERNMENT

The constitutional status of the Government

The Constitutional Court's ruling of 10 January 1998

In the Lithuanian system of the institutions of executive power, the Government, which implements state governance, plays an exceptional role. The Government is a collegial institution of general competence. The Government consists of the Prime Minister and ministers. Article 94 of the Constitution provides that the Government: manages national affairs, protects the territorial inviolability of the Republic of Lithuania, and guarantees state security and public order; executes laws, the resolutions of the Seimas on the implementation of laws, as well as the decrees of the President of the Republic; coordinates the activities of ministries and other establishments of the Government; prepares a draft state budget and submits it to the Seimas; executes the state budget and submits to the Seimas a report on the execution of the budget; prepares draft laws and presents them to the Seimas for consideration; establishes diplomatic ties and maintains relations with foreign states and international organisations; and performs other duties prescribed to the Government by the Constitution and other laws. The scope of the powers of the Government is defined by the Constitution. The Government is jointly and severally responsible to the Seimas for the general activities of the Government. Ministers, in directing the areas of governance assigned to them, are responsible to the Seimas and the President of the Republic, and are directly subordinate to the Prime Minister.

The accountability of the Government to the representation of the Nation

The Constitutional Court's ruling of 24 December 2002

Under the Constitution, the Seimas exercises parliamentary control over the Government. At the request of the Seimas, the Government or individual ministers must give an account of their activities to the Seimas (Paragraph 1 of Article 101 of the Constitution). Thus, the separation of powers in the Constitution also implies the accountability of the Government, a collegial institution of executive power, to the legislature, the representation of the Nation.

The constitutional status of the Government

The Constitutional Court's ruling of 13 December 2004

The foundations of the system of the institutions of executive power, as well as the powers of the supreme institutions of executive power, are established in the Constitution. The constitutional order of the State of Lithuania is based on the model of dual executive power: executive power in Lithuania is exercised by the President of the Republic – the Head of State and by the Government.

[...]

The Government is a collegial institution of executive power (ruling of 10 January 1998). Article 91 of the Constitution provides that the Government of the Republic of Lithuania consists of the Prime Minister and ministers; under Paragraph 1 of Article 98 of the Constitution, ministers, *inter alia*, head their respective ministry. According to Item 3 of Article 94 of the Constitution, the Government coordinates the activities of the ministries and other establishments of the Government. The Constitution specifies only one position of a minister – the Minister of National Defence (Paragraph 1 of Article 140 of the Constitution); therefore, according to the Constitution, the Ministry of National Defence may not be absent in Lithuania. When interpreting the legal regulation established in Item 3 of Article 94 of the Constitution, in its ruling of 23 November 1999, the Constitutional Court held that the Constitution does not reveal what

establishments are considered “establishments of the Government”; moreover, the Constitution does not specify what legal status of the aforementioned government establishments is. It is the legislature exercising discretion in this area (limited by the Constitution) that must establish this. On the other hand, certain government institutions are specified in the Constitution; for example, the institution of the representative of the Government, which has the power to supervise whether municipalities observe the Constitution and laws and whether they execute the decisions of the Government, is consolidated in Paragraphs 2 and 3 of Article 123 of the Constitution. In this context, it should also be mentioned that Paragraph 1 of Article 123 of the Constitution provides that, at higher-level administrative units, governance is organised by the Government according to the procedure established by law; thus, the legislature has the duty not only to establish higher-level administrative units, but also to provide for the government institutions through which the Government would organise governance at higher-level administrative units.

It should be mentioned that the powers of the President of the Republic and those of the Government, as two sub-branches of dual executive power, are autonomous and independent of each other. On the other hand, the Constitution *expressis verbis* specifies such powers of the President of the Republic and those of the Government that are jointly implemented by the President of the Republic and the Government. For instance, Article 85 of the Constitution, *inter alia*, prescribes: “To be valid, the decrees issued by the President of the Republic for the purposes specified in Items 3, 15, 17, and 21 of Article 84 of the Constitution must be signed by the Prime Minister or an appropriate Minister.” According to Item 1 of Article 84 of the Constitution, the President of the Republic, *inter alia*, together with the Government, conducts foreign policy. It should also be noted that, having regard to the Constitution, a law may also provide for such a legal regulation that certain state institutions would be established under the President of the Republic, the Head of State.

The constitutional status of the Government; under the Constitution, a situation in which there is no operating Government in the state is impermissible

The Constitutional Court’s ruling of 28 August 2020

... the Constitutional Court has held that, in the Lithuanian system of the authorities of the executive branch, the Government, which carries out state governance, has a special place (*inter alia*, the rulings of 10 January 1998, 13 December 2004, and 8 March 2018). ... the Government is an authority of executive power ensuring the functioning of the state. The Government is a collegial authority of executive power and implements state governance (*inter alia*, the rulings of 13 May 2010, 2 March 2018, and 25 November 2018).

Under the Constitution, the Government exercises executive power on a continuous basis (ruling of 10 January 1998). Under Article 94 of the Constitution, the Government: manages national affairs, protects the territorial inviolability of the Republic of Lithuania, and guarantees state security and public order (Item 1); executes laws, the resolutions of the Seimas on the implementation of laws, as well as the decrees of the President of the Republic (Item 2); coordinates the activities of ministries and other establishments of the Government (Item 3); prepares a draft state budget and submits it to the Seimas; executes the state budget and submits to the Seimas a report on the execution of the budget (Item 4); prepares draft laws and presents them to the Seimas for consideration (Item 5); establishes diplomatic ties and maintains relations with foreign states and international organisations (Item 6); and discharges other duties prescribed to the Government by the Constitution and other laws (Item 7). The powers of the Government are also established in Item 3 of Article 84, Paragraph 1 of Article 89, Paragraph 1 of Article 123, Paragraph 1 of Article 128, etc. of the Constitution.

In view of the foregoing, it should be held that the Constitution does not allow a situation in which there is no operating Government, as a collegial executive authority ensuring the functioning of the state and continuously implementing state governance, i.e. a situation in which there is neither the Government authorised to act under the Constitution nor the Government assigned, under the Constitution, to perform duties at least on a temporary basis.

Granting the Government the powers to act; the legal meaning of a programme of the Government (Item 7 of Article 67 and Paragraph 5 of Article 92 of the Constitution)

The Constitutional Court's ruling of 10 January 1998

The Seimas, by giving its assent to a programme of the Government, confers the powers on the Government to act; the constitutional norms regulating the activity of the Government, as well as those consolidating the principle of the responsibility of the Government to the Seimas, are thus implemented. It is established in the constitutional structure of the branches of power that only the Government that has the confidence of the Seimas may exercise its powers. The legal form of conferring such powers is voting in the Seimas for giving its assent to a programme of the Government.

The basis of a programme of the Government is the programmes of the political parties that have won the election; however, the provisions of these programmes acquire a legal meaning only through a programme of the Government and oblige both the Government and the majority of the Seimas supporting it to act respectively. Such recognition of the legal meaning of a programme of the Government is a characteristic feature of parliamentary democracy. The said feature is consolidated in the norms of Item 7 of Article 67 and Paragraph 5 of Article 92 of the Constitution.

This is the reason why the President of the Republic must appoint the Prime Minister who is supported by the majority of the Seimas and must approve such a Government the programme of which can be approved by a majority vote of the members of the Seimas who take part in the sitting. Otherwise, the institution of executive power ensuring the functioning of the state would never be formed. Attempting to gain the confidence of the Seimas, in foreseeing the directions of its activities for a certain time period, the Government must take into consideration the possible approval or non-approval by members of the Seimas. By expressing its confidence in a programme of the Government, the Seimas takes the obligation to supervise as to how the Government will be acting in implementing its own programme. A programme of the Government is the basis of the political and legal responsibility of the Government to the Seimas, because the Government is jointly and severally responsible to the Seimas for its general activities. The Seimas that has conferred the powers on the Government to act may express no confidence in the Government or the Prime Minister. The consequence of the expression of no confidence is the resignation of the Government.

Thus, a programme of the Government should be deemed a legal document wherein the main guidelines for the activities of the state for a certain time period are set out. Such a legal document must be published in the official gazette *Valstybės žinios*. Furthermore, the significance of the said programme as a legal form determining the actions of the institutions that form the Government and as a legal form ensuring interaction between the Government and those institutions is of no less importance.

[...]

Under the Constitution, the Government exercises executive power on a continuous basis. The activities of the Government are based on the confidence of the Seimas that has approved the programme of the Government.

The programme of the Government is compulsory to the Government for the whole term of its powers. Requesting the powers to act, a new Government submits its programme to the Seimas for consideration. By giving its assent to the programme of the Government, the Seimas expresses its confidence in the Government in principle for the period until the powers of the Seimas expire. Naturally, this does not mean that, if the Government resigns, the same programme will be approved again.

The formation of the Government

The Constitutional Court's ruling of 10 January 1998

The Government – a collegial institution of executive power – is formed by the Seimas and the President of the Republic; however, in forming the Government, the role and tasks of the Seimas and the

President of the Republic are different. The President of the Republic participates in this process as the Head of State, fulfilling the functions provided for in the Constitution; while the Seimas, to which the Government is responsible, acts as the representation of the nation.

Conferring the powers on the Government to act and exercising control over its activities are an important sphere of the competence of the Seimas. Article 67 of the Constitution provides for the following prerogatives of the Seimas: the Seimas gives or does not give its assent to the candidate proposed by the President of the Republic for the post of the Prime Minister; considers the programme of the Government, presented by the Prime Minister, and decides whether to give its assent to it; supervises the activities of the Government and may express no confidence in the Prime Minister or a minister, etc. Under Paragraph 1 of Article 96 of the Constitution, the Government is jointly and severally responsible to the Seimas for the general activities of the Government. ...

The relationships between the President of the Republic and the Government are regulated by the norms of the Constitution that provide that the President of the Republic, on the assent of the Seimas, appoints the Prime Minister; the President of the Republic assigns the Prime Minister to form the Government and approves the composition of the formed Government. The President of the Republic, on the assent of the Seimas, releases the Prime Minister from duties; the President of the Republic accepts the powers returned by the Government after the election of a new Seimas and assigns the Government to exercise its duties until a new Government is formed, accepts the resignation of the Government and, where necessary, assigns it to continue to exercise its duties, or assigns one of the ministers to exercise the duties of the Prime Minister, until a new Government is formed. The President of the Republic, on the resignation of the Government or after it returns its powers, within 15 days, proposes the candidate for the post of the Prime Minister for consideration by the Seimas, etc.

... According to the European constitutional tradition, the President appoints such a person as the head of the Government who is supported by the parliamentary majority. The said constitutional practice is also observed in Lithuania.

It appears from an analysis of the powers of the Seimas and those of the President of the Republic in the sphere of forming the Government that the main task of the activities of the President of the Republic in this process is to guarantee interaction between the institutions of power. In the course of forming the Government, the President of the Republic should be bound by his/her duty to act, first of all, in such a way that an efficient Government is formed, i.e. the one that has the confidence of the Seimas.

Therefore, based on the principles of parliamentary democracy, which are established in the Constitution, it should be presumed that the President of the Republic cannot freely choose the candidates for the posts of the Prime Minister or ministers, since, in all cases, the appointment of the said officials depends on the confidence or distrust expressed by the Seimas on this matter. At the same time, it is impossible to ignore the fact that the President of the Republic, as part of executive power, has certain political possibilities of influencing the formation of the personal structure of the Government.

The return of the powers of the Government after the election of the President of the Republic (Articles 80 and 82, as well as Paragraph 4 of Article 92, of the Constitution)

The Constitutional Court's ruling of 10 January 1998

Analysing the issue of the return of the powers of the Government, the Constitutional Court notes that the norms of Paragraph 4 of Article 92 of the Constitution may not be interpreted in isolation from other norms of the Constitution. The constitutional norms that regulate different aspects of the formation of the Government, as well as interrelations among the Seimas, the President of the Republic, and the Government, are set out in several chapters and articles of the Constitution. The Constitution is an integral act; therefore, in this particular case, priority should be given to a systemic interpretation. When the content of the norm of Paragraph 4 of Article 92 of the Constitution is interpreted, the purpose of adopting the said norm should be taken into consideration.

Article 82 of the Constitution prescribes: “On the day following the expiry of the term of office of the President of the Republic, the elected President of the Republic shall take office after he, in Vilnius, in the presence of the representatives of the Nation – the Members of the Seimas, takes an oath to the Nation to be faithful to the Republic of Lithuania and the Constitution, to conscientiously fulfil the duties of his office, and to be equally just to all.”

In the countries where the President is elected in a general election, there is, as a rule, a certain time period between the announcement of the election results and the beginning of the performance of duties by the President. During the said period, the outgoing President remains in office and the Parliament, as well as the Government, which has the confidence of the Parliament and in the formation of which the Head of State participated, continues to perform its functions. Such a sufficiently long pause is understandable, because the President who is leaving his/her office needs some time to prepare for transferring the duties of the Head of State, while the new President needs some preparation for accepting such duties.

The aforementioned time period is also established in Article 80 of the Constitution of the Republic of Lithuania. During this time period, the outgoing President of the Republic continues to be the Head of State. The Head of State has all powers vested in him/her under the Constitution. He/she is the only person who can exercise them. From the announcement of the final results of the election until taking an oath, the new elected President of the Republic has no powers of the Head of State yet. The Government, in forming which the outgoing President of the Republic participated, continues to exercise its powers.

After the new President of the Republic takes an oath, the powers of the former President of the Republic cease and, at the same time, the relationship of the Government cease with the former Head of State, who participated in forming that Government. The Constitutional Court, referring to the analysis of constitutional norms, draws the conclusion that the Government must return its powers to the newly elected President of the Republic after he/she takes an oath and takes office.

... interpreting the norms of Articles 80 and 82 and Paragraph 4 of Article 92 of the Constitution, the Constitutional Court draws the conclusion that the powers of the Government should be returned to the President of the Republic on the same day when he/she takes office. This interpretation is based on the fact that the Constitution does not provide for any other time period.

The concept and grounds of the resignation of the Government (Paragraphs 2 and 3 of Article 101 of the Constitution)

The Constitutional Court's ruling of 10 January 1998

The grounds of the resignation of the Government are consolidated in Paragraph 3 of Article 101 of the Constitution. The said paragraph provides that the Government must resign in the following cases:

(1) when the Seimas twice in succession does not give its assent to the programme of the newly formed Government;

(2) when the Seimas, by a majority vote of all the members of the Seimas and by secret ballot, expresses no confidence in the Government or in the Prime Minister;

(3) when the Prime Minister resigns or dies;

(4) after the election to the Seimas, when a new Government is formed.

In addition, when more than half of the ministers are replaced, the Government that does not once again receive its powers from the Seimas must resign (Paragraph 2 of Article 101 of the Constitution).

The Constitutional Court notes that this list of the grounds for the resignation of the Government is final.

It is clear that one of the main reasons for the resignation of the Government is either the loss of or failure to gain the confidence of the Seimas. The Constitution, however, provides for various forms of expressing no confidence: first, the Seimas may express no confidence directly; second, it may express no confidence by giving, twice in succession, no assent to the programme of a newly formed Government; third, the Government must once again, i.e. anew, receive its powers from the Seimas. Finally, the other

two cases presume that the Government loses the confidence of the Seimas, i.e. it loses its powers to act: first, when the Prime Minister resigns or dies and, second, after the election of the Seimas.

Thus, the resignation of the Government means the end of its activities. After the resignation of the Government, the procedure for forming a new Government begins; however, in the case provided for in Item 4 of Paragraph 3 of Article 101 of the Constitution, such a procedure begins prior to the resignation.

The differences between the legal effects of the resignation of the Government and those of the return of the powers of the Government; the receipt of powers once again after the election of the President of the Republic (Articles 84, 92, and 101 of the Constitution)

The Constitutional Court's ruling of 10 January 1998

In addition to the notion “the resignation of the Government”, the notion “the return of the powers of the Government” is also used in the Constitution. ... the grounds for the resignation of the Government are exhaustively listed in Article 101 of the Constitution. The essence of the grounds for the resignation of the Government is either the loss of or failure to gain the confidence of the Seimas. The return of the powers of the Government is provided for in two cases: first, after the election of the Seimas and, second, after the election of the President of the Republic (Paragraph 4 of Article 92 of the Constitution).

Thus, the conclusion may be drawn that the expiry of the powers of one of the subjects who participates in forming the Government entails the necessity of returning the powers of the Government. The constitutional norms, however, give a different meaning to the change of the aforesaid subjects and their influence on the formation of the Government. For instance, after an election of the Seimas, the Government must not only return its powers, but also resign (Item 4 of Paragraph 3 of Article 101 of the Constitution). Thus, in this case, the return of the powers is the first step towards the compulsory resignation of the Government imperatively prescribed by the Constitution. It is evident that, after an election of the Seimas, the subject that expressed confidence in the Government and granted it the powers to act is clearly missing; therefore, the Government must resign.

After a new Seimas is elected, the President of the Republic, on the basis of Item 6 of Article 84 of the Constitution, accepts the powers returned by the Government and assigns it to exercise its duties until a new Government is formed. Within 15 days, the President of the Republic proposes the candidate for the post of a new Prime Minister for consideration by the Seimas. The formation of a new Government is, thus, begun. After a new Government is formed, the Government that has returned its powers resigns (Item 4 of Paragraph 3 of Article 101 of the Constitution).

After an election of the President of the Republic, the Government also returns its powers to the newly elected President of the Republic. However, the norms of the Constitution do not prescribe that the Government must resign in such a situation. This is due to the fact that, after a new Head of State takes office, the confidence of the Seimas in the Government remains intact. Therefore, in the case of the return of powers after the election of a new President of the Republic, the same Government must be assigned by the Head of State to continue to exercise its functions. In the case of the resignation of the Government, the President of the Republic may assign another member of the Government to exercise the functions of the Prime Minister.

Thus, the Constitutional Court emphasises that there are no grounds for treating the notions “the resignation of the Government” and “the return of the powers of the Government” as identical. They relate to different legal situations. This also determines different legal consequences.

Item 8 of Article 84 of the Constitution provides that the President of the Republic, on the resignation of the Government or after it returns its powers, within 15 days, proposes the candidate for the post of the Prime Minister for consideration by the Seimas. The Constitutional Court notes that the essence of this norm is the prerogative of the President of the Republic to submit to the Seimas the candidate for the post of a new Prime Minister for consideration in due time. The notions “resignation” and “the return of the powers” used therein should be interpreted only with respect to the aforesaid circumstances.

It should be noted that the constitutional regulation of the return of the powers of the Government after the election of the President of the Republic of Lithuania reminds us, at least partly, of the constitutional

tradition of the Third French Republic, when the Government would resign after a parliamentary election, as well as after a presidential election. The resignation after a presidential election was called “resignation for the sake of courtesy” (*demission de courtoise*). After its “resignation for the sake of courtesy”, the Government used to be approved once again. This procedure is said to be meaningful due to the relation of the Government with the Head of State and that it reflects certain tendencies in the development of the model of government.

Although the Constitution of the Republic of Lithuania treats the return of powers in a somewhat different way, it undoubtedly expresses respect for the institution of the Head of State and recognises the importance of relationships between the President of the Republic and the Government. It is clear from an analysis of the content of Articles 84, 92, and 101 of the Constitution that such a return of powers does not imply the resignation of the Government. Otherwise, the Constitution would directly stipulate that, after the election of a new President of the Republic, the Government must return its powers and resign. Having returned its powers, the Government remains legitimate.

The procedure for the return of powers, however, is not merely an expression of interinstitutional courtesy: it provides the President of the Republic with the possibility of verifying whether the Seimas continues to have confidence in the Government. The President of the Republic, on the basis of Article 92 and Item 8 of Article 84 of the Constitution, taking account of the tradition of parliamentary democracy, under the procedure established in Item 8 of Article 84 of the Constitution, proposes the candidate for the post of the Prime Minister of the Government that has returned its powers for consideration by the Seimas. After the Seimas approves the candidate for the post of the Prime Minister and the President of the Republic appoints the Prime Minister and approves the composition of the Government proposed by the Prime Minister, the Government once again receives its powers to act, unless more than half of the ministers are replaced.

If the Seimas does not approve the candidate for the post of the Prime Minister, the Government must resign (Item 2 of Paragraph 3 of Article 101 of the Constitution). This would constitute a constitutional ground for the procedure of beginning the formation of a new Government.

The constitutional status of the Government; the receipt of the powers to act; parliamentary supervision over the activities of the Government; the receipt of powers once again after more than half of the ministers are replaced (Articles 92 and 101 of the Constitution)

The Constitutional Court's ruling of 20 April 1999

Paragraph 2 of Article 101 of the Constitution prescribes: “When more than half of the Ministers are replaced, the Government must once again receive its powers from the Seimas. Otherwise, the Government must resign.”

It is possible to reveal the content of this norm of the Constitution only by taking into account the procedure for forming and empowering the Government as consolidated in the Constitution, the legal regulation governing how the Government once again receives its powers to act, and the particularities of legal interrelationships between the Seimas and the Government.

Article 5 of the Constitution provides that, in Lithuania, state power is executed by the Seimas, the President of the Republic and the Government, and the judiciary. This provision of the Constitution constitutes the grounds for the separation and balance of the powers of the state. The Government is a collegial institution of general competence carrying out state governance. According to Article 91 of the Constitution, the Government of the Republic of Lithuania consists of the Prime Minister and ministers. The Prime Minister is appointed and released by the President of the Republic on the assent of the Seimas (Paragraph 1 of Article 92 of the Constitution). Under Paragraph 3 of Article 92 of the Constitution, the Prime Minister, within 15 days of his/her appointment, forms and presents to the Seimas the Government, approved by the President of the Republic, and submits the programme of the formed Government for consideration by the Seimas.

The personal composition of the Government is formed both by the Prime Minister and by the President of the Republic. However, the mere approval of the composition of the Government is not enough

so that the Government could begin to act. The Government must have the confidence of the Seimas. Therefore, Paragraph 5 of Article 92 of the Constitution provides that “a new Government shall receive the powers to act after the Seimas gives assent to its programme by a majority vote of the Members of the Seimas participating in the sitting”. The assent to the programme of the Government means that the Government is empowered to implement the provisions of its programme.

The Seimas not only empowers the Government to act, but also, conforming to Item 9 of Article 67 of the Constitution, supervises the activities of the Government. For instance, under Paragraph 1 of Article 101 of the Constitution, at the request of the Seimas, the Government or individual ministers must give an account of their activities to the Seimas. The Seimas, by a majority vote of all the members of the Seimas and by secret ballot, may express no confidence in the Government (Item 2 of Paragraph 3 of Article 101 of the Constitution). The Constitution also provides for other ways as to how the Seimas may carry out the supervision of the Government.

The composition of the Government may change due to various reasons. Under Paragraph 2 of Article 101 of the Constitution, when more than half of the ministers are replaced, the Government must once again receive its powers from the Seimas; otherwise, the Government must resign. The institution of receiving powers once again is one of the forms of parliamentary supervision over the Government. By applying such a form, the Seimas can verify whether the programme of the Government that was approved by the Seimas is still carried out after more than half of the ministers are replaced. The procedure for receiving powers once again is regulated by the Statute of the Seimas.

Such a constitutional regulation of the powers of state institutions and their interrelations in the course of forming the Government and granting it powers once again reflects the principle of the separation and balance of state powers, as established in the Constitution.

In order to determine how the replacement of ministers under Paragraph 2 of Article 101 of the Constitution should be understood, the circumstance of essential importance is that the Government is a collegial institution that is jointly and severally responsible to the Seimas for its general activities. Therefore, under the Constitution, the beginning of the powers of the Government is linked with the assent given by the Seimas to its programme, but not with the personal composition of the Government. Considering whether to give its assent to a programme of the Government, the Seimas does not decide the issues of the personal composition of the Government, since the appointment of ministers is the prerogative of the Prime Minister and the President of the Republic. Voting for giving its assent to a programme of the Government, the Seimas expresses its consent that the Government would manage national affairs in the manner as provided for by such a programme. As long as the Seimas does not give its assent to a programme of the Government, the Government has no powers to act.

As mentioned before, the Government consists of the Prime Minister and ministers. A minister heads the respective ministry; he/she is responsible to the Seimas and the President of the Republic and is directly subordinate to the Prime Minister. Even though ministers head their respective ministry and are responsible for individual areas of governance, however, the general affairs of state governance are decided by the Government at its sittings by adopting resolutions by a majority vote of all the members of the Government (Paragraph 1 of Article 95 of the Constitution).

On the grounds of a systemic interpretation of the said provisions of the Constitution, it is possible to draw the conclusion that the fact that, by the assent of the Seimas to the programme of the Government, the Government receives its powers to act consolidates the principle of expressing confidence in the Government *in corpore* by the Seimas. Changing the area of governance entrusted to a minister is important from the aspect of his/her responsibility. From the standpoint of interrelationships between the Government *in corpore* and the Seimas, it is not the replacement of individual ministers in the Government (in cases where a member of the Government is appointed to head another ministry etc.) that is important, but rather the fact whether such changes result in more than half of new ministers in the Government. In such a case, the Seimas has a constitutional ground for verifying whether the Government continues to carry out the programme that was approved by the Seimas. Therefore, in the opinion of the Constitutional Court, the provision of Paragraph 2 of Article 101 of the Constitution relating to the replacement of ministers should

be understood as meaning that a new person who is not a member of the Government is appointed instead of the head of a ministry who was released from duties or as the head of a newly established ministry.

In deciding whether more than half of the ministers were replaced in the Government, it is also very important to establish the number of ministers from which the replacement of ministers must be counted. In such a case, account should be taken of the fact that, under Paragraph 1 of Article 98 of the Constitution, ministers head their respective ministry. In view of this, the conclusion should be drawn that the number of ministers is determined by the number of ministries that is prescribed by the Law on the Government.

The principle of the responsibility of the Government to the Seimas

The Constitutional Court's ruling of 28 August 2020

... on the basis of the competence of state institutions as established by the Constitution, the model of government of the State of Lithuania should be categorised as a parliamentary republican form of government. In view of this, the Constitution establishes the principle of the responsibility of the Government to the Seimas. That principle is reflected, *inter alia*, in Paragraph 1 of Article 96 of the Constitution, which states that the Government is jointly and severally, i.e. *in corpore*, responsible to the Seimas for the general activities of the Government.

The constitutional principle of the responsibility of the Government to the Seimas is also reflected in the constitutional provisions establishing the power of the Seimas to exercise parliamentary control over the Government. The Constitution lays down various ways in which the Seimas implements the supervision of the Government, as, for instance: the Seimas, under Item 9 of Article 67 of the Constitution, supervises the activities of the Government; under Paragraph 1 of Article 101 of the Constitution, at the request of the Seimas, the Government or individual ministers must give an account of their activities to the Seimas; the Seimas, by a majority vote of all the members of the Seimas and by secret ballot, may express no confidence in the Government (Item 2 of Paragraph 3 of Article 101 of the Constitution) (ruling of 20 April 1999).

... the constitutional provisions consolidating the principle of the responsibility of the Government to the Seimas and the respective powers of the Seimas to exercise parliamentary control over the Government should be interpreted in the light of, *inter alia*, the parliamentary republican form of government, which is established in the Constitution, also in the light of the constitutional concept of pluralistic parliamentary democracy, which is enshrined in the Constitution and implies, *inter alia*, political pluralism in the parliament of a democratic state under the rule of law, as well as in the light of the requirement, arising from Paragraphs 2 and 3 of Article 5 of the Constitution and from the constitutional principles of responsible governance and a state under the rule of law, that the Seimas must properly implement the constitutional powers of supervision over the Government, *inter alia*, in adopting lawful and reasonable legal acts.

... The principle of the responsibility of the Government to the Seimas is reflected in the provisions of Item 7 of Article 67, Paragraph 5 of Article 92, and Paragraph 2 of Article 101 of the Constitution, which ... regulate the granting of powers (*inter alia*, the granting of powers once again) to the Government and which also consolidate the powers of parliamentary control over the Government carried out by the Seimas. As noted by the Constitutional Court, the constitutional regulation of the powers of state authorities and their interrelationships in forming the Government and granting it powers once again reflects the principle of the separation and balance of state powers, as established in the Constitution (ruling of 20 April 1999).

Granting the Government the powers to act (Item 7 of Article 67 and Paragraph 5 of Article 92 of the Constitution)

The Constitutional Court's ruling of 28 August 2020

Item 7 of Article 67 of the Constitution lays down the powers of the Seimas to consider the programme of the Government, presented by the Prime Minister, and to decide whether to assent to it. Closely related to this provision is Paragraph 5 of Article 92 of the Constitution, which provides that a new Government

receives the powers to act after the Seimas gives assent to its programme by a majority vote of the members of the Seimas participating in the sitting.

Thus, Item 7 of Article 67 and Paragraph 5 of Article 92 of the Constitution consolidate the institution of granting powers to the Government.

... Interpreting the provisions of Item 7 of Article 67 and Paragraph 5 of Article 92 of the Constitution, the Constitutional Court has held the following:

- granting powers to the Government to act and exercising control over its activities are an important sphere of the competence of the Seimas; the Seimas, by giving assent to a programme of the Government, grants powers to the Government to act; the constitutional norms regulating the activity of the Government and consolidating the principle of the responsibility of the Government to the Seimas are, thus, implemented; it is established in the constitutional structure of the branches of power that only such a Government may exercise its powers that has the confidence of the Seimas; the legal form of granting such powers is voting in the Seimas for giving assent to a programme of the Government; under the Constitution, the activities of the Government are based on the confidence of the Seimas that has given its assent to the programme of the Government (ruling of 10 January 1998);

- the personal composition of the Government is formed both by the Prime Minister and by the President of the Republic; however, the mere approval of the composition of the Government is not enough so that the Government could begin to act; the Government must have the confidence of the Seimas; therefore, Paragraph 5 of Article 92 of the Constitution provides that “a new Government shall receive the powers to act after the Seimas gives assent to its programme by a majority vote of the Members of the Seimas participating in the sitting”; assent to the programme of the Government means that the Government is empowered to implement the provisions of its programme (ruling of 20 April 1999);

- the Government is a collegial institution that is jointly and severally responsible to the Seimas for its general activities; therefore, under the Constitution, the beginning of the powers of the Government is linked with the assent given by the Seimas to its programme, but not with the personal composition of the Government; considering whether to give its assent to a programme of the Government, the Seimas does not decide the issues of the personal composition of the Government, since the appointment of ministers is the prerogative of the Prime Minister and the President of the Republic; voting for giving its assent to a programme of the Government, the Seimas expresses its consent that the Government would manage national affairs in the manner as provided for by such a programme; as long as the Seimas does not give its assent to a programme of the Government, the Government has no powers to act; the fact that, by the assent of the Seimas to the programme of the Government, the Government receives its powers to act consolidates the principle of expressing confidence in the Government *in corpore* by the Seimas (ruling of 20 April 1999);

- a programme of the Government is the basis of the political and legal responsibility of the Government to the Seimas, because the Government is jointly and severally responsible to the Seimas for its general activities; this programme determines the actions of the authorities forming the Government and ensures interaction between the Government and those authorities (rulings of 10 January 1998 and 15 February 2013); a programme of the Government consolidates the programme provisions of the Government and sets out non-normative guidelines for the activities of the state for a certain time period (ruling of 6 November 2013);

- the basis of a programme of the Government is the programmes of the political forces that have won the election to the parliament; however, the provisions of those programmes acquire a legal meaning only through a programme of the Government and oblige both the Government and the majority of the Seimas supporting it to act respectively; such recognition of the legal meaning of a programme of the Government is a characteristic feature of parliamentary democracy; the said feature is consolidated in the norms of Item 7 of Article 67 and Paragraph 5 of Article 92 of the Constitution; this is the reason why the President of the Republic must appoint the Prime Minister who is supported by the majority of the Seimas and must

approve such a Government whose programme can be approved by a majority vote of the members of the Seimas who take part in the sitting (ruling of 10 January 1998);

– seeking to gain the confidence of the Seimas, in foreseeing the directions of its activities for a certain time period, the Government must take into consideration the possible approval or non-approval by the members of the Seimas; by expressing its confidence in a programme of the Government, the Seimas takes the obligation to supervise how the Government will act in implementing its programme (rulings of 10 January 1998 and 6 November 2013); the programme of the Government is compulsory to the Government for the whole term of its powers; by giving its assent to the programme of the Government, the Seimas expresses its confidence in the Government in principle for the period until the powers of the Seimas expire (ruling of 10 January 1998).

... the regulation governing the granting of powers to the Government, consolidated in Item 7 of Article 67 and Paragraph 5 of Article 92 of the Constitution, reflects the particularities of parliamentary pluralist democracy and expresses one of the most important features of a parliamentary republic – the confidence of the Seimas as the basis for the powers of the Government. Such confidence of the Seimas is expressed in the Government *in corpore*, i.e. by giving assent not to the personal composition of the Government, but to its programme, which sets out the provisions of the programme of the Government – guidelines for the activities of the state for a certain time period based on the provisions of the programme of the political forces that have won the election to the Seimas (majority of the Seimas); such assent to the programme of the Government is possible only after the Seimas duly considers it in the spirit of political pluralism and if there is support by the majority of the Seimas for the provisions of the programme of the Government. It should be stressed that, according to Item 7 of Article 67 and Paragraph 5 of Article 92 of the Constitution, powers may be granted to the Government in the sole way – once the Seimas assents to the programme of the Government.

The re-empowerment of the Government when more than half of the ministers are replaced (Paragraph 2 of Article 101 of the Constitution); differences between the re-empowerment of the Government (when more than half of the ministers are replaced) and the return of the powers of the Government (Paragraph 4 of Article 92 and Paragraph 2 of Article 101 of the Constitution)

The Constitutional Court's ruling of 28 August 2020

Paragraph 2 of Article 101 of the Constitution prescribes: “When more than half of the Ministers are replaced, the Government must once again receive its powers from the Seimas. Otherwise, the Government must resign.”

Paragraph 2 of Article 101 of the Constitution establishes the institution of the re-empowerment of the Government when more than half of the ministers are replaced. It should be noted that the institution of receiving powers once again is one of the forms of parliamentary supervision over the Government. By applying such a form, the Seimas can verify whether the programme of the Government that was assented to by the Seimas is still carried out after more than half of the ministers are replaced (ruling of 20 April 1999).

As the Constitutional Court has pointed out in interpreting Paragraph 2 of Article 101 of the Constitution, the composition of the Government may change for various reasons; under Paragraph 2 of Article 101 of the Constitution, when more than half of the ministers are replaced, the Government must once again receive its powers from the Seimas; otherwise, the Government must resign (ruling of 20 April 1999).

... under Paragraph 2 of Article 101 of the Constitution, the reason for re-empowering the Government is a substantial change in its composition – more than half of the ministers, which requires the Seimas to verify whether the Government whose composition changes substantially can implement its programme that has been assented to by the Seimas. Thus, the replacement of individual ministers, i.e. a non-substantial change in the composition of the Government until more than half of the ministers are replaced, does not, under the Constitution, constitute grounds for doubting the ability of the Government to carry out its

programme that has been assented to by the Seimas in accordance with the procedure laid down in Paragraph 5 of Article 92 of the Constitution.

According to Paragraph 2 of Article 101 of the Constitution, a Government with a substantially changed composition (when more than half of the ministers are replaced) does not return its powers to the President of the Republic, but it must receive them once again as an expression of the confidence of the Seimas; if it fails to receive such powers, the Government is deemed to have lost the confidence of the Seimas and must resign. Thus, the institution, consolidated in Paragraph 2 of Article 101 of the Constitution, of the re-empowerment of the Government differs fundamentally from the institution of the return of the powers of the Government, which is consolidated in Paragraph 4 of Article 92 of the Constitution, which provides that the Government returns its powers to the President of the Republic after an election of the Seimas or after an election of the President of the Republic.

Interpreting the provision of Paragraph 4 of Article 92 of the Constitution, the Constitutional Court has noted that, according to that provision, the return of the powers of the Government is envisaged in two cases: first, after an election to the Seimas and, second, after an election of the President of the Republic (ruling of 10 January 1998). As the Constitutional Court noted in its ruling of 10 January 1998, after an election of the Seimas, the Government must not only return its powers, but also resign (Item 4 of Paragraph 3 of Article 101 of the Constitution); thus, in this case, the return of powers is the first step towards the compulsory resignation of the Government imperatively prescribed by the Constitution; it is evident that, after an election of the Seimas, the subject that expressed confidence in the Government and granted it the powers to act is clearly missing; therefore, the Government must resign. It should be noted that, in this case, the Government is not re-empowered, because this Government resigns when a new Government is formed.

The Constitutional Court also noted in its ruling of 10 January 1998 that, after an election of the President of the Republic, the Government returns its powers to the newly elected President of the Republic; however, the norms of the Constitution do not prescribe that the Government must resign in such a situation; this is due to the fact that, after a new Head of State takes office, the confidence of the Seimas in the Government remains intact; therefore, in the case of the return of powers after the election of a new President of the Republic, the same Government must be assigned by the Head of State to continue to exercise its functions. Thus, the procedure for the return of powers provides the President of the Republic with the possibility of verifying whether the Seimas continues to have confidence in the Government; the President of the Republic, on the basis of Article 92 and Item 8 of Article 84 of the Constitution, taking account of the tradition of parliamentary democracy, under the procedure established in Item 8 of Article 84 of the Constitution, proposes the candidate for the post of the Prime Minister of the Government that has returned its powers for consideration by the Seimas; after the Seimas approves the candidate for the post of the Prime Minister and the President of the Republic appoints the Prime Minister and approves the composition of the Government proposed by the Prime Minister, it is recognised that the Government once again receives its powers to act, unless more than half of the ministers are replaced (ruling of 10 January 1998).

It needs to be noted that, in this case, according to Paragraph 4 of Article 92 of the Constitution, the Government is deemed to have once again received the powers to act after the Seimas approves the candidate for the Prime Minister of the Government that has returned its powers and not to the programme of the Government, as the confidence of the Seimas in the Government, expressed previously in accordance with Paragraph 5 of Article 92 of the Constitution after the assent of the Seimas to the programme of that Government, remains, i.e. there is no constitutional basis for the Seimas to verify whether the Government can continue to implement the programme to which it has assented. Such a constitutional basis is established only in Paragraph 2 of Article 101 of the Constitution and is related not to an election of the President of the Republic, but to the said substantial change – more than half of the ministers – in the composition of the Government, which may occur not exclusively after an election of the President of the Republic.

Interpreting Paragraph 2 of Article 101 of the Constitution, the Constitutional Court noted in its ruling of 20 April 1999 that the procedure for receiving powers once again is regulated by the Statute of the Seimas. However, this does not mean that, under the Constitution, the Seimas has broad discretion to regulate, in the Statute of the Seimas, the procedure for the re-empowerment of the Government when more than half of the ministers are replaced. Paragraph 2 of Article 101 of the Constitution must not be understood literally as implying the right of the Seimas to re-empower the Government by means of a legal act of any content when more than half of the ministers are replaced.

In its acts, the Constitutional Court has held more than once that the provisions of the Constitution, which is an integral act (Paragraph 1 of Article 6 of the Constitution), are interrelated and constitute a harmonious system, that there is a balance among the values consolidated in the Constitution, and that it is not permitted to interpret any provision of the Constitution in a way that the content of any other provision of the Constitution would be distorted or denied, since the essence of the entire constitutional legal regulation would, thus, be distorted and the balance of values consolidated in the Constitution would, thus, be disturbed. Moreover, the Constitutional Court has also held that no constitutional provision can be interpreted only literally; it is not permitted to interpret any provision of the Constitution in a way that the content of any other provision of the Constitution would be distorted or denied, since the essence of the entire constitutional legal regulation would, thus, be distorted and the balance of values consolidated in the Constitution would, thus, be disturbed (*inter alia*, the rulings of 29 April 2008, 2 September 2009, and 6 December 2012). In this context, it should be noted that the constitutional legal regulation is established explicitly, while it may also be consolidated implicitly (ruling of 15 February 2019).

Thus, Paragraph 2 of Article 101 of the Constitution must be interpreted taking into account its semantic connections with Item 7 of Article 67 and Paragraph 5 of Article 92 of the Constitution, which ... lay down the regulation governing the granting of powers to the Government; that regulation reflects the particularities of parliamentary pluralist democracy and expresses one of the most important features of a parliamentary republic – the confidence of the Seimas as the basis for the powers of the Government. ... according to Item 7 of Article 67 and Paragraph 5 of Article 92 of the Constitution, such confidence of the Seimas is expressed in the Government *in corpore*, i.e. by giving assent not to the personal composition of the Government, but to its programme, which sets out the provisions of the programme of the Government – guidelines for the activities of the state for a certain time period based on the provisions of the programme of the political forces that have won the election to the Seimas (majority of the Seimas).

... according to the Constitution, the Seimas does not decide the issues of the personal composition of the Government, since the appointment of ministers is the prerogative of the Prime Minister and the President of the Republic; therefore, the only way for the Seimas to express confidence in the Government *in corpore* of a substantially changed composition (when more than half of the ministers are replaced) in accordance with Paragraph 2 of Article 101 of the Constitution, as is also the case of expressing confidence in a new Government in accordance with Paragraph 5 of Article 92 of the Constitution, is to assent to the programme of the Government after due consideration. Only in this way can the Seimas verify, in accordance with Paragraph 2 of Article 101 of the Constitution, whether the Government of a substantially changed composition can carry out its programme. ... the re-empowerment of the Government when more than half of the ministers are replaced provides the possibility of assessing the implementation of the programme of the Government and make necessary changes thereto, taking into account the implemented programme provisions and the evolution of the state and society. Among other things, changes in the programme of the Government may be related to the fact that more than half of the ministers are replaced following a partial change of the political forces (which are in the Seimas) forming the Government and, therefore, there could be a need to integrate into the programme of the Government the programme provisions of the new political forces that have joined the majority of the Seimas.

Consequently, under Paragraph 2 of Article 101 of the Constitution, when more than half of the ministers are replaced, the procedure of the re-empowerment of the Government must not be a mere formality: the Government must receive the powers once again when the Seimas adopts a decision to assent

to the programme of the Government. A different interpretation of Paragraph 2 of Article 101 of the Constitution, according to which the Seimas may purportedly re-empower the Government without reconsidering its programme provisions and without assenting to its programme would be incompatible with the requirement, arising from Paragraphs 2 and 3 of Article 5 of the Constitution and from the constitutional principles of responsible governance and a state under the rule of law, that the Seimas must properly implement the constitutional powers of supervision over the Government, as well as incompatible with the concept of pluralistic parliamentary democracy, which is enshrined in the Constitution and which implies, *inter alia*, political pluralism in the parliament of a democratic state under the rule of law.

[...]

... the activities of the Government are based on the confidence of the Seimas that has approved the programme of that Government; the only way for the Seimas to express confidence in the Government *in corpore* of a substantially changed composition (when more than half of the ministers are replaced) in accordance with Paragraph 2 of Article 101 of the Constitution, as is also the case of expressing confidence in a new Government in accordance with Paragraph 5 of Article 92 of the Constitution, is to assent to the programme of the Government after due consideration.

When re-empowering the Government in cases where more than half of the ministers are replaced, the Seimas must adopt the resolution of the Seimas on assenting to the programme of the Government by a majority vote of the members of the Seimas participating in the sitting

The Constitutional Court's ruling of 28 August 2020

... under Paragraph 2 of Article 101 of the Constitution, when more than half of the ministers are replaced, the Government must once again receive its powers from the Seimas when the Seimas adopts a decision to assent to the programme of the Government. Having regard to the overall constitutional regulation, *inter alia*, Paragraph 5 of Article 92 of the Constitution, as well as the requirement, stemming from the Constitution, that, in resolving state governance issues assigned to the Seimas under the Constitution and laws, where the regulation of the said issues does not require the adoption of laws and where resolving those issues gives rise to legal consequences for other persons, the Seimas must adopt resolutions of the Seimas by a majority of the members of the Seimas participating in the sitting (unless the Constitution explicitly specifies a different majority necessary for the adoption of the respective decision of the Seimas), it should be concluded that, by re-empowering the Government in accordance with Paragraph 2 of Article 101 of the Constitution when more than half of the ministers are replaced, the Seimas must adopt the resolution of the Seimas on assenting to the programme of the Government by a majority vote of the members of the Seimas participating in the sitting.

7.3. THE POWERS OF THE GOVERNMENT

On the powers of the Government in the sphere of the budget, see 11. The state budget and finances, 11.1. The state budget. The property liabilities of the state. Taxes.

The powers of the Government

The Constitutional Court's ruling of 26 February 2010

The powers of the Government as an institution of state power are established, *inter alia*, in Article 94 of the Constitution. Under Article 94 of the Constitution, the Government: manages national affairs, protects the territorial inviolability of the Republic of Lithuania, and guarantees state security and public order (Item 1); executes laws, the resolutions of the Seimas on the implementation of laws, as well as the decrees of the President of the Republic (Item 2); coordinates the activities of ministries and other establishments of the Government (Item 3); prepares a draft state budget and submits it to the Seimas; executes the state budget and submits to the Seimas a report on the execution of the budget (Item 4); prepares draft laws and presents them to the Seimas for consideration (Item 5); establishes diplomatic ties

and maintains relations with foreign states and international organisations (Item 6); and performs other duties prescribed to the Government by the Constitution and other laws (Item 7).

The powers of the Government are also established in Item 3 of Article 84, Paragraph 1 of Article 89, Paragraph 1 of Article 123, Paragraph 1 of Article 128, etc. of the Constitution. The powers of the Government arise from the Constitution and laws. Everything that the Government performs, while implementing the powers established for it in the Constitution and laws, is deciding the affairs of state governance (rulings of 29 November 2001 and 30 May 2003).

The powers of the Government

The Constitutional Court's ruling of 13 May 2010

The Constitution consolidates only the main powers of the Government and stipulates that the Government also performs other duties prescribed to it not only by the Constitution, but also by other laws (Item 7 of Article 94 of the Constitution). Such a constitutional regulation of the powers of the Government is determined by the fact that the areas and functions of state governance are extremely varied and subject to change. The activity of the Government has not only an executive nature, but also a procedural nature. While executing laws and resolutions adopted by the Seimas, the Government itself passes normative and individual legal acts and ensures their enforcement (ruling of 23 November 1999).

7.4. THE ORGANISATIONAL FORM OF THE ACTIVITY OF THE GOVERNMENT AND LEGAL ACTS ADOPTED BY IT

Legal acts adopted by the Government are substatory legal acts

The Constitutional Court's ruling of 26 October 1995

... Legal acts adopted by the Government are substatory legal acts ... In its ruling of 19 January 1994, the Constitutional Court held the following: the norms of a law are implemented by means of a substatory legal act; however, "such an act may not replace the law itself and create new general legal rules the legal force of which would compete with the norms of the law. A substatory legal act is an act of the application of the norms of a law irrespective of whether such a substatory act has one-off (ad hoc) or permanent validity" ...

Legal acts adopted by the Government are substatory legal acts

The Constitutional Court's ruling of 18 June 1998

... in the system of the sources of legal acts that exists in this country, legal acts adopted by the Government are substatory acts. Substatory legal acts particularise and regulate the implementation of the norms of laws.

The organisational form of the activity of the Government and legal acts adopted by it (Paragraph 1 of Article 95 of the Constitution)

The Constitutional Court's ruling of 23 November 1999

Paragraph 1 of Article 95 of the Constitution provides that "The Government of the Republic of Lithuania shall decide the affairs of state governance at its sittings by adopting resolutions by a majority vote of all the members of the Government".

The aforesaid legal norm establishes the organisational form of the activity of the Government, i.e. questions are decided at the sittings of the Government; it is specified therein what kind of a majority vote is necessary in order to adopt a resolution, i.e. a resolution must be adopted by a majority vote of all the members of the Government; and the type of legal acts adopted by the Government is established therein, i.e. the affairs of state governance are decided by adopting resolutions of the Government. To summarise the content of the legal norm set out in Paragraph 1 of Article 95 of the Constitution, the conclusion should be drawn that this norm determines the manner how the Government decides the affairs of state governance.

The powers of the Government to adopt substatory acts (Items 2 and 7 of Article 94 of the Constitution)

The Constitutional Court's ruling of 15 March 2000

Article 94 of the Constitution prescribes:

“The Government of the Republic of Lithuania:

... 2) shall execute laws, the resolutions of the Seimas on the implementation of laws, as well as the decrees of the President of the Republic;

... 7) shall discharge other duties prescribed to the Government by the Constitution and other laws.”

[...]

Under Item 2 of Article 94 of the Constitution, the Government may adopt substatory acts regardless of whether or not a law instructs it to do so. Under Item 7 of Article 94 of the Constitution, the Government is obligated to adopt substatory acts in order to perform its duty imposed on it by the Constitution and other laws. ... In all cases, however, a legal act adopted by the Government may not be in conflict with any law, and, furthermore, such a legal act may not contain any new legal norms competing with those of a law. In addition, the legislature may not instruct the Government to perform certain actions where the content of such an instruction would violate the constitutional principle of the supremacy of laws.

Thus, the sole ground that a law instructs the Government to regulate additionally a certain question of the implementation of the law, or that such an instruction is missing, makes it impossible to decide whether a certain substatory act adopted by the Government is in conflict with the Constitution and laws or whether such a substatory act is in compliance with them. In every concrete case, an assessment should be made of the relation between the content of the norms of a substatory act adopted by the Government and that of the norms of the laws for the implementation of which the said substatory act was adopted.

The duty of the Government to harmonise its resolutions with the norms of laws that are adopted later (Items 2 and 7 of Article 94 of the Constitution)

The Constitutional Court's ruling of 5 April 2000

... a government resolution is a substatory legal act; therefore, such an act may not be in conflict with any law and it may not contain any legal norms competing with those of a law. In cases where a government resolution that contains norms conflicting with a law is adopted before the said law is passed, such a government resolution must be harmonised with the norms of the law that is adopted later.

[...]

... the norms of Items 2 and 7 of Article 94 of the Constitution that provide that the Government executes laws and performs other duties prescribed to it by the Constitution and other laws should be interpreted as establishing the duty of the Government to amend and supplement the acts that it previously adopted in order that they would be in compliance with subsequently adopted laws, or to repeal the acts that it previously adopted in cases where the legal norms established in such government acts are in conflict with those of laws.

The duty of the Government to adopt substatory acts that are necessary in order to implement laws (Items 2 and 7 of Article 94 of the Constitution); the Government is bound by its own resolutions

The Constitutional Court's ruling of 30 October 2001

Under the provision of Item 2 of Article 94 of the Constitution, the Government executes laws; thus, the duty of the Government to adopt substatory acts that are necessary in order to implement laws stems directly from the Constitution.

Moreover, if the legislature believes that it is necessary to adopt certain substatory acts in order to implement laws, it may impose such a duty on the Government either by means of a law or in a resolution of the Seimas concerning the implementation of laws.

Thus, the duty of the Government to adopt the substatory acts that are necessary for the implementation of laws stems from the Constitution and, in cases where there is the assignment by the

legislature to do so, it also stems from laws and the resolutions of the Seimas concerning the implementation of laws.

The phrase “under the procedure established by the Government” ... means that it is the Government itself that must establish the said procedure. The Government may not instruct any other institution to establish such a procedure. In view of the fact that, under Paragraph 1 of Article 95 of the Constitution, the Government decides the affairs of state governance at its sittings by adopting resolutions by a majority vote of all the members of the Government, the aforementioned phrase means that the said procedure must be established by means of a government resolution. Such a resolution must have a normative content. ...

In its ruling of 28 June 2001, the Constitutional Court held that the Government is bound by and must observe its own resolutions. Thus, the procedure adopted by the Government is binding not only on other subjects, but also on the Government itself. As long as the procedure established by the Government is in force, it may not adopt any decisions otherwise than under the said procedure.

Implementing the assignment by the legislature to establish a certain procedure, the Government may lay down only such a legal regulation that is in compliance with laws. The procedure established by the Government may not contain any legal norms that would provide for a legal regulation that would be different from that established in laws. The same procedure may not contain any norms competing with the norms of laws, either.

The powers of the Government to establish when its resolutions come into force and lose their validity (Paragraph 1 of Article 95 of the Constitution)

The Constitutional Court’s ruling of 29 October 2003

Under Paragraph 1 of Article 95 of the Constitution, the Government of the Republic of Lithuania decides the affairs of state governance at its sittings by adopting resolutions by a majority vote of all the members of the Government.

Under the Constitution, the Government has the powers to adopt resolutions; consequently, the Government also has the powers to establish when a resolution adopted by it comes into force. According to the Constitution, the Government also has the powers to establish when its resolutions lose their validity. The Government can establish this by adopting a resolution. Thus, according to the Constitution, only the Government itself has the right to decide when government resolutions come into force and lose their validity. In establishing when resolutions adopted by it come into force or lose their validity, the Government must respect the Constitution and laws.

The Constitutional Court has held in its rulings more than once that, if the Constitution directly establishes particular powers of a certain state institution, no state institution can take over such powers from another institution, or transfer or waive them, while the other institution cannot accept such powers; such powers may not be changed or limited by law.

Under the Constitution, the Government may not establish, by its resolutions, any such a legal regulation that the time of the entry into force or the loss of the validity of a resolution would depend on the entry into force of a lower-ranking legal act that is passed by another subject.

Signing resolutions of the Government and their authenticity (Paragraph 2 of Article 95 of the Constitution)

The Constitutional Court’s ruling of 29 October 2003

... under Paragraph 2 of Article 95 of the Constitution, the resolutions of the Government are signed by the Prime Minister and the minister of the respective area.

Thus, Paragraph 2 of Article 95 of the Constitution prescribes what state officials have the powers to sign the resolutions of the Government. The provision of Paragraph 2 of Article 95 of the Constitution also means that the Prime Minister and the minister of the respective area must sign the resolutions of the Government if they have been adopted according to the established procedure, and that persons who are not specified in Paragraph 2 of Article 95 of the Constitution, i.e. who are not the Prime Minister and the

minister of the respective area, or are only the Prime Minister or only the minister of the respective area, are prohibited from signing the resolutions of the Government.

According to the Constitution, after the entry into force of the Constitution, only those resolutions of the Government that are signed by the Prime Minister and the minister of the respective area are authentic.

[...]

Signing a government resolution is a one-off act. Its signing testifies that such a resolution of the Government has been adopted and that namely the signed text of the government resolution is authentic.

[...]

The requirement of Paragraph 2 of Article 95 of the Constitution stipulating that the resolutions of the Government are signed by the Prime Minister and the minister of the respective area must be applied to government resolutions that were adopted after the entry into force of the Constitution. This requirement may not be applied retroactively to the government acts that were adopted and signed before the entry into force of the Constitution.

The Government is bound by its own resolutions

The Constitutional Court's ruling of 8 July 2005

The Government is bound by its own resolutions (ruling of 28 June 2001). As long as a government resolution is not amended or repealed, the Government must follow the requirements laid down in such a resolution.

The duty of the Government to observe laws that are in force (Item 2 of Article 94 of the Constitution)

The Constitutional Court's ruling of 23 May 2007

Under the Constitution, the Government, as an institution of executive power, has broad discretion to form and pursue the economic policy of the state and to regulate economic activity accordingly. Under Paragraph 1 of Article 95 of the Constitution, the Government decides the affairs of state governance at its sittings by adopting resolutions by a majority vote of all the members of the Government; the Government is jointly and severally responsible to the Seimas for the general activities of the Government (Paragraph 1 of Article 96 of the Constitution). According to its competence defined in the Constitution and laws, in formulating and pursuing the economic policy of the state and regulating economic activity in the respective manner, *inter alia*, by adopting resolutions, the Government must not act *ultra vires*; the Government must observe the Constitution and laws. Should the Government fail to observe laws, the constitutional principle of a state under the rule of law, implying the hierarchy of legal acts, and Item 2 of Article 94 of the Constitution, under which the Government executes, *inter alia*, laws, would be denied.

[...]

... the Government ... does not have discretion to decide not to apply the provisions of a certain law regulating the respective relationships, unless the non-application of a certain provision of such a law is *expressis verbis* provided for in laws.

Legal acts adopted by the Government and their official publication (Article 95 of the Constitution, Paragraph 4 of the Constitutional Act on Membership of the Republic of Lithuania in the European Union)

The Constitutional Court's ruling of 27 June 2007

Under Article 95 of the Constitution, the Government decides the affairs of state governance at its sittings by adopting resolutions by a majority vote of all the members of the Government (Paragraph 1); the resolutions of the Government are signed by the Prime Minister and the minister of the respective area (Paragraph 2).

In this context, it should be mentioned that the Constitution does not *expressis verbis* establish any time frame within which adopted government resolutions must be signed and officially published. The time

frame during which a resolution adopted by the Government must be signed and officially published must be laid down in a law.

When interpreting Article 95 of the Constitution (also in the context of other provisions of the Constitution), the Constitutional Court held that, under the Constitution, the Government, while deciding the affairs of state governance, must always adopt resolutions; such resolutions must be published regardless of whether the legal acts adopted by the Government are normative or individual, and regardless of the subjects or the circles of subjects for which the said legal acts are intended (rulings of 29 November 2001 and 30 May 2003). The procedure for the publication of government resolutions and their entry into force is established by means of a law (ruling of 29 November 2001).

In this context, it needs to be emphasised that the provisions of the official constitutional doctrine that the Government, while deciding the affairs of state governance, must always adopt resolutions and such resolutions must be published regardless of whether the legal acts adopted by the Government are normative or individual, and regardless of the subjects or the circles of subjects for which the said legal acts are intended, have been formulated in the jurisprudence of the Constitutional Court, *inter alia*, in the constitutional justice cases where the Constitutional Court investigated the constitutionality of the legal acts (paragraphs thereof) that were passed prior to 14 August 2004 when the Republic of Lithuania's Constitutional Act on Membership of the Republic of Lithuania in the European Union, which was adopted on 13 July 2004, came into force; the said constitutional act approved in a constitutional manner the membership of the Republic of Lithuania in the European Union (rulings of 13 December 2004 and 14 March 2006) and is, according to Article 150 of the Constitution, a constituent part of the Constitution.

After the entry into force of the Constitutional Act on Membership of the Republic of Lithuania in the European Union, the formerly formulated official constitutional doctrine of government acts is developed in the jurisprudence of the Constitutional Court while taking account of the fact that Paragraph 4 of this Constitutional Act prescribes that the Government considers the proposals to adopt the acts of European Union law following the procedure established by legal acts and that, as regards these proposals, the Government may adopt decisions or resolutions for the adoption of which the provisions of Article 95 of the Constitution are not applicable.

Thus, the provisions of the official constitutional doctrine that the Government, while deciding the affairs of state governance, must always adopt resolutions and that such resolutions must be officially published regardless of whether the legal acts adopted by the Government are normative or individual, and regardless of the subjects or the circles of subjects for which the said legal acts are intended are not applicable to the government resolutions and decisions that are adopted pursuant to Paragraph 4 of the Constitutional Act on Membership of the Republic of Lithuania in the European Union.

The acts of the Government are statutory legal acts

The Constitutional Court's ruling of 8 October 2009

... the Constitutional Court ... has held that, if the legal regulation laid down in government resolutions competed with the legal regulation established in laws or were not based on laws, there would be not only a violation of both the constitutional principle of a state under the rule of law and Item 2 of Article 94 of the Constitution, but also a violation of Paragraph 2 of Article 5 of the Constitution, which provides that the scope of powers is limited by the Constitution; in addition, this could lead to a violation of the constitutional principle of the separation of powers (rulings of 31 May 2006, 13 August 2007, and 29 April 2009).

The powers of the Government to adopt substatory acts (Items 2 and 7 of Article 94 of the Constitution)

The Constitutional Court's ruling of 29 September 2015

Under Item 2 of Article 94 of the Constitution, the Government executes laws, the resolutions of the Seimas on the implementation of laws, as well as the decrees of the President of the Republic; under Item 7 of this article, the Government implements other duties prescribed to it by the Constitution and other laws.

While interpreting these constitutional provisions, the Constitutional Court has held on more than one occasion that legal acts adopted by the Government are substatory acts; they are the acts of application of law; they elaborate the legal norms and make them more concrete, as well as regulate their implementation; it is important that the Government would adopt substatory legal acts without exceeding its powers and that these substatory legal acts would not be in conflict with the Constitution and laws.

The Constitutional Court has noted that, under Item 2 of Article 94 of the Constitution, the Government may adopt substatory acts regardless of whether or not a law instructs it to do so; meanwhile, under Item 7 of this article, it must adopt substatory acts in order to fulfil duties assigned to it by the Constitution and laws (ruling of 15 March 2000). In the acts of the Constitutional Court, it is also emphasised that the legislature may not assign the Government to perform certain actions in such a way that, by its content, would violate the constitutional principle of the supremacy of laws (ruling of 15 March 2000) and that only such powers of the Government to issue legal acts may be regarded to be in compliance with the Constitution that stem from the Constitution, laws, or resolutions of the Seimas concerning the implementation of such laws that are not in conflict with the Constitution, as well as from such decrees of the President of the Republic that are not in conflict with the Constitution (ruling of 5 March 2004). Thus, the sole ground that a law instructs the Government to regulate additionally a certain question of the implementation of the law, or that such an instruction is missing, makes it impossible to decide whether a certain substatory act adopted by the Government is in conflict with the Constitution and laws, or whether such a substatory act is in compliance with them; in every concrete case, an assessment should be made of the relation between the content of the norms of a substatory act adopted by the Government and that of the norms of the laws for the implementation of which the said substatory act was adopted (ruling of 15 March 2000).

The duty of the Government to observe valid laws, *inter alia*, the procedure for adopting legal acts that is established in laws (Item 2 of Article 94 of the Constitution)

The Constitutional Court's ruling of 8 July 2016

When interpreting Item 2 of Article 94 of the Constitution, the Constitutional Court has held on more than one occasion that, under the Constitution, the Government must observe valid laws when passing its legal acts (*inter alia*, the rulings of 18 December 2001, 13 August 2007, and 16 June 2015), *inter alia*, it must observe such laws that establish the procedure for adopting legal acts. The Government must follow the procedure for the drafting, assessment, coordination, and consideration of its own resolutions, as well as for voting on them, which is established by laws (ruling of 13 August 2007). It should be noted that the duty of the Government to observe the procedure for adopting legal acts that is established in laws not only may, but also must be treated as a constitutional duty.

... in the course of adopting legal acts, none of the stages or rules of the procedure for adopting legal acts that is established in laws may be ignored; the necessity to adopt legal acts consistently with the procedure for adopting legal acts that is established in laws stems from the Constitution. Under the Constitution, the stages and rules of the procedure for adopting legal acts of the Government, as established in laws and other legal acts, must be observed while preparing any draft legal act of the Government, irrespective of whether this legal act is aimed to amend (modify) a legal regulation, to establish a new one, or to annul an effective one.

The duty of the Government to comply with the publicity and transparency requirements of law-making procedures when adopting legal acts

The Constitutional Court's ruling of 8 July 2016

... the constitutional principle of responsible governance, which is to be interpreted in conjunction with the imperative obliging state institutions to serve the people, as consolidated in Paragraph 3 of Article 5 of the Constitution, implies the publicity and transparency requirements of law-making procedures; such requirements must be followed, *inter alia*, by institutions that exercise state power. ...

... also such constitutionally justifiable cases are possible where a law may also provide for a non-public process of passing legal acts where such legal acts are adopted by the Government, as, for instance, in order to protect information constituting a state secret, to avoid a threat to the constitutional order, defensive power, or other important interests.

[...]

... in view of the constitutional status of the Government as an executive state institution, as well as of the fact that, under Article 95 of the Constitution, the Government decides the affairs of state governance at its sittings by adopting resolutions, only a law may provide for the constitutionally justified exceptional cases related to the adoption of government decisions, *inter alia*, during a state of emergency or martial law or in the event of a natural disaster, when the agenda of a sitting of the Government can be supplemented with new draft legal acts that have not been agreed, according to the ordinary procedure, with the ministries, as well as other government establishments and state institutions concerned, by specifying the relevant reasons. However, once such a procedure for the initiation of the legal acts (submission of draft legal acts) of the Government is established by means of a law, no preconditions should be created for the formation of such a practice of supplementing the agenda of a sitting of the Government with additional issues that, by way of derogation from the said constitutionally justified exceptions, would deny the constitutional requirements of publicity and transparency of law-making procedures.

Legal acts adopted by the Government (Article 1 of the Constitution and Article 4 of the Constitutional Act on Membership of the Republic of Lithuania in the European Union)

The Constitutional Court's ruling of 2 March 2018

Paragraph 1 of Article 95 of the Constitution provides that the Government decides on state governance issues at its sittings by adopting resolutions by a majority vote of all the members of the Government. ...

Interpreting Paragraph 1 of Article 95 of the Constitution, the Constitutional Court has held that the Government, while deciding on state governance issues, must always adopt resolutions; these resolutions must be officially published regardless of whether the legal acts adopted by the Government are normative or individual, and regardless of the subjects or the circles of subjects for which these legal acts are intended (rulings of 29 November 2001, 30 May 2003, and 27 June 2007); state governance issues assigned to the competence of the Government under the Constitution and laws may not be decided by the adoption of another type of an act by the Government (*inter alia*, the rulings of 29 November 2001, 30 May 2003, and 13 May 2010).

The only exception provided for by the Constitution when the Government is allowed to disregard these requirements is set out in Article 4 of the Constitutional Act on Membership of the Republic of Lithuania in the European Union, which is a constituent part of the Constitution:

“The Government shall consider the proposals to adopt the acts of European Union law following the procedure established by legal acts. As regards these proposals, the Government may adopt decisions or resolutions for the adoption of which the provisions of Article 95 of the Constitution are not applicable.”

Thus, as noted by the Constitutional Court, the provisions of the official constitutional doctrine that the Government, while deciding on state governance issues, must always adopt resolutions and that the legal acts of the Government must be officially published regardless of whether the legal acts adopted by

the Government are normative or individual, and regardless of the subjects or the circles of subjects for which these legal acts are intended are not applicable to the decisions and resolutions of the Government that are adopted in accordance with Article 4 of the Constitutional Act on Membership of the Republic of Lithuania in the European Union (rulings of 27 June 2007 and 13 May 2010).

In this context, it should be noted that, in accordance with Article 4 of the Constitutional Act on Membership of the Republic of Lithuania in the European Union, when the procedure for considering the proposals to adopt the acts of European Union law is established in legal acts, certain other requirements that are laid down in Article 95 for the adoption of the acts of the Government by which the Government decides on state governance issues may also be not applied.

This means, therefore, that it may be allowed to decide regarding the proposals to adopt the acts of European Union law not in the sittings of the Government, but in a different organisational form of the activities of the Government (among others, in the meetings of the Government); the decisions and resolutions of the Government on these proposals may also be exempted from the requirement, consolidated for the resolutions of the Government in Paragraph 2 of Article 95 of the Constitution, that the resolutions of the Government are signed by the Prime Minister and the minister of the respective area.

It should be noted that the wording “the provisions of Article 95 of the Constitution are not applicable” of Article 4 of the Constitutional Act on Membership of the Republic of Lithuania in the European Union may not be made absolute and interpreted as allowing for the adoption of the above-mentioned decisions and resolutions of the Government not by a majority vote of all the members of the Government.

In the Lithuanian system of executive authority institutions, the Government, which implements state governance, has a special place (rulings of 10 January 1998, 13 December 2004, and 13 May 2010); ... under the Constitution, the Government is a collegial executive authority institution, which implements state governance.

It should be mentioned that, *inter alia*, interpreting the provision consolidated in Article 1 of the Constitution that the State of Lithuania is an independent democratic state, the Constitutional Court has pointed out that one of the democratic principles of decision making is the principle of the majority (rulings of 22 July 1994, 4 April 2006, and 29 March 2012).

It should also be mentioned that, as it is clear from the *travaux préparatoires* of the Constitutional Act on Membership of the Republic of Lithuania in the European Union, Article 4 of this Act was not aimed at imposing a requirement different from the requirement of a majority vote of all the members of the Government, laid down in Paragraph 1 of Article 95 of the Constitution, for the adoption of the decisions and resolutions of the Government, but it was aimed at ensuring, compared to the adoption of the resolutions of the Government, the faster adoption of the decisions and resolutions of the Government on approving the position of the Republic of Lithuania on the proposals to adopt the acts of European Union law.

Thus, it should be noted that, under the Constitution, when deciding on state governance issues, the Government may adopt resolutions (Paragraph 1 of Article 95 of the Constitution), as well as decisions or resolutions (Article 4 of the Constitutional Act on Membership of the Republic of Lithuania in the European Union). It should also be noted that, in view of the constitutional nature of the Government as a collegial executive authority institution, as well as the requirement, stemming from the constitutionally consolidated principle of democratic decision making, that collegial state institutions must adopt decisions by a majority vote, under the Constitution, *inter alia*, Paragraph 1 of Article 95 thereof, all acts of the Government that the Government adopts in deciding on state governance issues (*inter alia*, in approving, in accordance with Article 4 of the Constitutional Act on Membership of the Republic of Lithuania in the European Union, the position of the Republic of Lithuania on the proposals to adopt the acts of European Union law) must be adopted by a majority vote of all the members of the Government. If Article 4 of the Constitutional Act on Membership of the Republic of Lithuania in the European Union were interpreted differently, i.e. that, purportedly, under this article, a majority vote of all the members of the Government is not required to adopt the decisions and resolutions of the Government, the position of the Republic of Lithuania on the proposals to adopt the acts of European Union law, once approved by the said acts of the

Government, could not be considered to be the position of the Government and, at the same time, could not be considered to be the position of the Republic of Lithuania.

To sum up, it should be noted that, under the Constitution, an act adopted by the Government in deciding state governance issues not by a majority vote of all the members of the Government cannot be considered an expression of the will of the Government as a collegial executive authority institution.

Resolutions of the Government on the recognition of economic, social, cultural, or other projects as important to the state

The Constitutional Court's ruling of 12 April 2018

... under the Constitution, while deciding on state governance issues, the Government must always adopt resolutions; these resolutions must be officially published regardless of whether the legal acts adopted by the Government are normative or individual, and regardless of the subjects or the circles of subjects for which these legal acts are intended (*inter alia*, the rulings of 30 May 2003, 27 June 2007, and 2 March 2018).

The resolutions of the Government, as well as other legal acts, may differ according to the form, contents, structure, or scope and may have various constituent parts (appendices) (ruling of 27 June 2007). The Constitutional Court held in its ruling of 9 February 2010 that all parts of a normative legal act (including appendices) constitute a whole, are inseparably interconnected, and have equal legal force; a legal act and its appendices may not be separated, because, if the content specifically set out in appendices is changed, the content of the entire normative legal act also changes; an entire legal act with all its constituent parts must be published.

[...]

... in its rulings of 26 February 2010 and 2 April 2013, the Constitutional Court, interpreting in conjunction with Paragraph 2 of Article 7 of the Constitution, the requirements, stemming from the constitutional principle of a state under the rule of law, for the publication of government acts on approving state property privatisation agreements (drafts on amending them), noted the following:

- no cases may be tolerated where government resolutions perfunctorily approbate privatisation agreements the content of which is not known to the public, and do not indicate anything specific;
- the constitutional requirement that law must be public means not only that a government resolution on approving draft privatisation agreements, including their appendices, for the most important Lithuanian economic objects must be officially published, but also that such a government resolution must not only formally approve the draft agreement, including appendices, but it also must, *inter alia*, state that the provisions of the draft agreement, which is approved by this resolution, are in compliance with the privatisation conditions provided for in the programme for the privatisation of the object, as well as it must contain the principal provisions of the agreement, such as the aim and object of the agreement and the essential obligations of the state.

These provisions of the official constitutional doctrine are *mutatis mutandis* applicable to government resolutions on the recognition of economic, social, cultural, or other projects as important to the state.

[...]

... Paragraph 2 of Article 7 of the Constitution, the constitutional principle of a state under the rule of law, and the principle of the transparency of the activities of public authority institutions and officials, which stems from Paragraphs 2 and 3 of Article 5 of the Constitution and the constitutional principle of responsible governance, imply the requirement for the Government, when recognising economic, social, cultural, or other projects to be important to the state, not only to express, in a government resolution, a formal decision to recognise a certain project to be important to the state, but also to establish, in this resolution (or its constituent parts) or another officially published legal act, the essential conditions for the implementation of the project that is important to the state, such as the aim, object, implementation deadlines, the sources of funding, the essential obligations of the developer (developers) of the project, etc.

[...]

... after certain projects are recognised to be important to the state in accordance with the procedure established by legal acts, Paragraphs 2 and 3 of Article 46 of the Constitution and the constitutional principle of responsible governance give rise to the duty of the Government to exercise effective control over the implementation of these projects, *inter alia*, in accordance with the procedure and grounds established by legal acts, to recognise as no longer valid government resolutions on giving certain projects the status of a project important to the state in cases where these projects no longer meet the criteria for declaring them to be important to the state.

The duty of the Government to ensure the effective execution of laws (Items 2 and 7 of Article 94 of the Constitution)

The Constitutional Court's ruling of 27 April 2018

... Items 2 and 7 of Article 94 of the Constitution, which consolidate the powers of the Government as an executive authority institution, as well as the constitutional principles of a state under the rule of law and responsible governance, give rise to the duty of the Government to ensure the effective execution of laws, *inter alia*, in cases where there is no specific authorisation for it established by means of a law. This duty of the Government includes, *inter alia*, the duty of the Government to adopt statutory acts necessary for ensuring the continuity of the activities of establishments financed from the state budget and the proper performance of the functions assigned to them. When adopting these legal acts, the Government ... under the Constitution, must observe the effective laws and, when executing certain laws, must not violate others.

7.5. THE MEMBERS OF THE GOVERNMENT. MINISTRIES

The powers of the Prime Minister to sign international treaties (Item 1 of Article 84, Item 6 of Article 94, and Paragraph 1 of Article 97 of the Constitution)

The Constitutional Court's ruling of 17 October 1995

The fact that the Prime Minister is entitled to sign international treaties can be derived from the constitutional provisions related to the powers of the Government in the sphere of foreign policy and international relations. Item 1 of Article 84 of the Constitution provides that the President of the Republic “shall decide the basic issues of foreign policy and, together with the Government, conduct foreign policy”. The second provision of this item means that not only the President of the Republic, but also the Government has the concrete powers to conclude international treaties, as without such powers it is impossible to conduct foreign policy. Item 6 of Article 94 of the Constitution provides that the Government “shall establish diplomatic ties and maintain relations with foreign states and international organisations”. Such ties and relations are also established and consolidated by international treaties. The right of the Prime Minister to sign treaties is also substantiated by the provision of Paragraph 1 of Article 97 of the Constitution, according to which “The Prime Minister shall represent the Government of the Republic of Lithuania”.

Ministries, their establishment, and dissolution (Item 8 of Article 67 of the Constitution)

The Constitutional Court's ruling of 3 June 1999

In establishing the functions and powers of the institutions of legislative power and those of executive power in the Constitution, interaction between such functions and powers is also provided for. Such a norm is consolidated in Item 8 of Article 67 of the Constitution: the Seimas shall “upon the proposal of the Government, establish and abolish the ministries of the Republic of Lithuania”. ...

Ministries are state governance institutions that have special competence. They are established or dissolved with a view to organising governance in various spheres. A ministry fulfils the functions of state governance in the sphere established for it by means of laws and other legal acts; in the said sphere, a ministry conducts state policy. Fulfilling their functions, ministries inevitably participate not only in

governance, but also in other legal relationships of varied nature (property relationships, employment relationships, etc.). Ministries are legal persons.

Item 8 of Article 67 of the Constitution consolidates the right of the Seimas to establish and dissolve ministries. The implementation of such powers of the Seimas is bound by the concrete powers of the Government that are consolidated in the Constitution: if the Government does not present a particular proposal, the Seimas may not adopt a decision whether to establish or dissolve a ministry. Thus, this norm of the Constitution ensures the balance of power between the legislative and executive branches.

The competence of ministers to head their respective ministry (Paragraph 1 of Article 98 of the Constitution)

The Constitutional Court's ruling of 23 November 1999

Paragraph 1 of Article 98 of the Constitution provides that “Ministers shall head their respective ministry, shall decide on issues belonging to the competence of their ministry, and shall also discharge other functions provided for by law”.

[...]

It should be noted that the following elements constitute the content of the provision “Ministers shall head their respective ministry” of Paragraph 1 of Article 98 of the Constitution: under procedure established by law or by means of other legal acts, a minister is entitled to choose the employees of his/her ministry and to appoint and dismiss them; a minister is entitled to organise the work of the employees of his/her ministry in order that the functions established for the ministry by law and by means of other legal acts would be performed; a minister is entitled to give instructions to all employees of his/her ministry who must carry them out; a minister is entitled to apply disciplinary measures to all employees of his/her ministry who fail to perform their duties or fail to carry out the instructions of the minister, or who fail to carry them out properly; a minister is entitled to give incentives to all employees of his/her ministry.

[...]

It needs to be noted that the competence of a minister to head his/her ministry established in Paragraph 1 of Article 98 of the Constitution implies his/her personal responsibility for the activities of the ministry. Under Paragraph 2 of Article 96 of the Constitution, ministers, in directing the areas of governance entrusted to them, are responsible to the Seimas and the President of the Republic, and are directly subordinate to the Prime Minister. Paragraph 1 of Article 101 of the Constitution provides that ministers must give an account of their activities to the Seimas. ...

[...]

... A minister, who is empowered to head his/her ministry under Paragraph 1 of Article 98 of the Constitution, is also responsible for the activity of all the ministry headed by him/her and for the execution of laws, government resolutions, and other legal acts. Thus, a minister is also responsible for the economic and financial activity of his/her ministry regardless of the character of such activity ...

The direct subordination of a minister to the Prime Minister (Paragraph 2 of Article 96 of the Constitution)

The Constitutional Court's ruling of 23 November 1999

Under Paragraph 2 of Article 96 of the Constitution, ministers are directly subordinate to the Prime Minister. This means that legally a minister is not subordinate to any other subjects and that, under the Constitution, only the Prime Minister and, in the cases provided for in the Constitution, the President of the Republic may give instructions to a minister. The Constitution does not grant any other subject ... the right to give instructions to a minister.

The constitutional status of the Government and its members (Paragraph 2 of Article 60, Articles 99 and 100 of the Constitution)

The Constitutional Court's ruling of 30 May 2003

Under the Constitution, the Government, which is composed of the Prime Minister and ministers, is a collegial institution of executive power.

The Prime Minister and ministers may not hold any other elective or appointive office, may not work in any business, commercial, or other private establishments or enterprises, nor may they receive any remuneration other than that established for their respective governmental duties and payment for creative activities (Article 99 of the Constitution). According to Paragraph 2 of Article 60 of the Constitution, the Prime Minister and ministers may be members of the Seimas at the same time.

It should also be noted that the Constitution establishes the immunity of the Prime Minister and ministers in order that the Government would perform, without hindrance, the duties assigned to it under the Constitution and laws. Article 100 of the Constitution provides that the Prime Minister and ministers may not be held criminally liable or be detained, or have their liberty restricted otherwise, without the prior consent of the Seimas or, in the period between the sessions of the Seimas, without the prior consent of the President of the Republic.

The competence of ministers to head the respective ministry (Paragraph 1 of Article 98 of the Constitution)

The Constitutional Court's ruling of 8 March 2018

Paragraph 1 of Article 98 of the Constitution prescribes: “Ministers shall head their respective ministry, shall decide on issues belonging to the competence of their ministry, and shall also discharge other functions provided for by law.”

In this context, it should be noted that ministries are state governance institutions that have special competence; they are established or dissolved with a view to organising governance in various spheres; a ministry fulfils the functions of state governance in the area assigned to it by means of laws and other legal acts; in the said area, the ministry implements state policy; fulfilling their functions, ministries inevitably participate not only in governance legal relationships, but also in other legal relationships of varied nature (property relationships, employment relationships, etc.) (ruling of 3 June 1999).

It should also be noted that, besides the performance of state functions assigned to them, the authorities implementing state power also perform other activities, *inter alia*, related to the performance of internal administration functions (ruling of 13 May 2010). ... it should be noted that, in the activity of a ministry, which carries out the functions of state governance in the area assigned to it and implements state policy in this area, there are, *inter alia*, also activities related to the performance of internal administration functions.

In its ruling of 23 November 1999, among other things, interpreting the provisions of Paragraph 1 of Article 98 of the Constitution, the Constitutional Court noted that the content of the provision “Ministers shall head their respective ministry” is composed of the following elements: under the procedure established by means of laws or other legal acts, a minister has the right to choose the staff members of the ministry and to recruit and dismiss them; a minister has the right to organise the work of the staff of the ministry in order that the functions established for the ministry by means of laws and other legal acts would be performed; a minister has the right to give instructions to all the staff of the ministry, who must carry them out; a minister has the right to apply disciplinary measures to the staff of the ministry if they fail to fulfil their duties or the instructions of the minister, or fail to fulfil them properly; a minister has the right to give incentives to all the staff of the ministry.

... the competence of a minister to head the respective ministry, which is consolidated in Paragraph 1 of Article 98 of the Constitution, includes, *inter alia*, certain internal administration powers with respect to the ministry and the establishments assigned to the area entrusted to the ministry (establishments under the ministry), including the right, under the procedure established by means of laws and other legal acts, to choose the staff of the ministry and the heads of the establishments assigned to the area entrusted to the ministry, to recruit and dismiss them, as well as the right to apply disciplinary measures to them or give them incentives.

... it should be mentioned that, under the Constitution, it is not allowed to establish such a legal regulation that would in general prevent a minister from exercising the powers arising from the provision

“Ministers shall head their respective ministry” of Paragraph 1 of Article 98 of the Constitution, *inter alia*, the powers related to the internal administration of the ministry and the establishments assigned to the area entrusted to the ministry; in addition, such a legal regulation may not limit the possibilities of a minister, who exercises the constitutional powers conferred on him/her, to effectively control how the ministry that he/she is heading and for which he/she is responsible performs the functions assigned to this ministry, as well as how it carries out other activities (*inter alia*, internal administration) that are related to the functions assigned to this ministry.

In this context, it should be mentioned that Paragraph 1 of Article 98 of the Constitution does not specify the procedure under which a minister implements the competence provided for in the Constitution; this procedure is established in laws, government resolutions, or other legal acts (ruling of 23 November 1999).

The responsibility of ministers for their respective activities in the exercise of their powers to head the respective ministry (Paragraphs 2 and 3 of Article 5, Paragraph 2 of Article 30, Paragraph 2 of Article 96, Paragraph 1 of Article 98, Article 100, and Paragraph 2 of Article 128 of the Constitution)

The Constitutional Court’s ruling of 8 March 2018

... when interpreting Paragraph 2 of Article 5 of the Constitution, which prescribes that the scope of power is limited by the Constitution, in conjunction with Paragraph 3 of the same article, which stipulates that state institutions serve the people, the Constitutional Court has noted that the Constitution is supreme law limiting state power and it consolidates the principle of responsible governance (*inter alia*, the rulings of 1 July 2004, 19 November 2015, and 2 March 2018); this principle implies that all state institutions and officials are obliged to follow the Constitution and law while performing their functions and must properly implement the powers granted to them by the Constitution and laws by acting in the interests of the Nation and the State of Lithuania (*inter alia*, the conclusion of 26 October 2012 and the rulings of 11 July 2014 and 22 December 2016).

In its ruling of 22 January 2008, revealing the content of one of the principles of the activity of public authority institutions and officials – the principle of transparency, arising from the Constitution, *inter alia*, Paragraphs 2 and 3 of Article 5 thereof, the Constitutional Court emphasised that it implies, among other things, accountability to the respective community and the responsibility of decision-making officials for their decisions; transparency is a necessary precondition, *inter alia*, for preventing the abuse of power; therefore, it is a necessary precondition for people to have trust in public authority institutions and the state in general; transparency as a principle of the activity of public authority institutions and officials implies, among other things, that adopted decisions must be well-grounded and clear so that, if the need arises, it would be possible to provide rational reasons for them; other persons must have the possibility of disputing these decisions in accordance with the established procedure.

... it should be noted that, under the Constitution, *inter alia*, Paragraphs 2 and 3 of Article 5 thereof, as well as under the constitutional principle of responsible governance, ministers, when exercising the internal administration powers conferred on them by the Constitution and laws with respect to the ministry and the establishments assigned to the area entrusted to the ministry, must properly implement these powers conferred on them by the Constitution and laws, *inter alia*, they must adopt lawful and justified decisions when implementing these powers.

The responsibility of the authorities to society is inseparable from the constitutional principle of a state under the rule of law; this responsibility is constitutionally consolidated by having stipulated that state institutions serve the people and that the scope of power is limited by the Constitution (*inter alia*, the conclusion of 31 March 2004 and the rulings of 13 May 2015 and 19 November 2015).

Paragraph 2 of Article 96 of the Constitution provides that ministers, in directing the areas of governance assigned to them, are responsible to the Seimas and the President of the Republic, and are

directly subordinate to the Prime Minister. Under Paragraph 1 of Article 101 of the Constitution, ministers must give an account of their activities to the Seimas.

In its ruling of 24 December 2002, the Constitutional Court held that, under the Constitution, the Seimas exercises parliamentary control over the Government; the separation of powers in the Constitution also implies the accountability of the Government, a collegial executive authority institution, to the legislative power – the representation of the Nation.

It should be noted in this context that the Constitution provides for the immunity of the Prime Minister and ministers in order that the Government could perform without hindrance the duties assigned to it under the Constitution and laws. Article 100 of the Constitution provides that the Prime Minister and ministers may not be held criminally liable or be detained, or have their liberty restricted otherwise, without the prior consent of the Seimas or, in the period between the sessions of the Seimas, without the prior consent of the President of the Republic (ruling of 30 May 2003).

... it should be noted that the Constitution consolidates the political responsibility of ministers to the Seimas, the President of the Republic, and the Prime Minister for directing the areas of governance assigned to them, and that Article 100 of the Constitution provides for the immunity of ministers in cases where criminal responsibility or the restriction of liberty is applied.

It should be noted that the Constitution does not contain other provisions that would establish the exclusive status of ministers compared to other subjects to whom legal responsibility is applied on the basis of the general grounds provided for by law. Consequently, in view of the overall legal regulation consolidated in the Constitution, there are no grounds for stating that, under the Constitution, other rules of legal responsibility are applicable to ministers (except for the immunity, provided for in Article 100 of the Constitution, in cases where criminal responsibility or the restriction of liberty is applied) if compared to other persons.

A different interpretation of the provisions of the Constitution, *inter alia*, of those of Paragraph 2 of Article 96 and Article 100 thereof, that, purportedly, under the Constitution, also other immunity from legal responsibility (except for the immunity provided for in Article 100 of the Constitution) is applicable to ministers would be inconsistent with the constitutionally consolidated responsibility of the authorities to society, with the provisions of Paragraphs 2 and 3 of Article 5 of the Constitution, as well as with the constitutional principles of responsible governance and a state under the rule of law, and would imply a privilege, which is prohibited under Paragraph 2 of Article 29 of the Constitution.

In its ruling of 23 November 1999, interpreting, among other things, the provision “Ministers shall head their respective ministry” of Paragraph 1 of Article 98 of the Constitution, the Constitutional Court held the following:

- the competence of a minister to head the respective ministry, as established in Paragraph 1 of Article 98 of the Constitution, implies the personal responsibility of the minister for the activities of the ministry;

- a minister, who is empowered to head the respective ministry under Paragraph 1 of Article 98 of the Constitution, is also responsible for the activity of all the ministry headed by him/her and for the execution of laws, government resolutions, and other legal acts; thus, a minister is also responsible for the economic and financial activity of the respective ministry regardless of the nature of this activity.

... in the activity of a ministry, which carries out the functions of state governance in the area assigned to it and implements state policy in this area, there are, *inter alia*, activities related to the performance of internal administration functions. ... under the Constitution, a minister, among other things, has the powers, under the procedure established by means of laws and other legal acts, to choose the heads of the establishments assigned to the area entrusted to his/her ministry and to recruit and dismiss them.

... it should be noted that the personal responsibility of a minister, implied by the provision “Ministers shall head their respective ministry” of Paragraph 1 of Article 98 of the Constitution, means the personal responsibility of a minister for all his/her activities, *inter alia*, for the proper exercise of the internal administration powers conferred on him/her with respect to the ministry and the establishments assigned

to the area entrusted to the ministry (for instance, the powers to dismiss the staff members of the ministry, as well as the heads of the establishments assigned to the area entrusted to the ministry).

[...]

... under the Constitution, *inter alia*, Paragraph 3 of Article 5 and Paragraph 2 of Article 30 thereof, as well as under the constitutional principle of a state under the rule of law, a person who has suffered material and/or moral damage as a result of the unlawful actions committed by state authority institutions or officials must be compensated for this damage, while taking into account the reasonable and justified criteria established by law in order to determine the amount of the damage. ... this duty of the state is to be interpreted as including the obligation to compensate a person for the material and/or moral damage suffered by him/her as a result of the unlawful actions committed by a minister in the exercise of the internal administration powers with respect to the ministry and the establishments assigned to the area entrusted to the ministry.

[...]

... under the Constitution, *inter alia*, the constitutional principles of responsible governance and a state under the rule of law, if state officials, *inter alia*, ministers, when improperly exercising the powers conferred on them by the Constitution and laws, by their unlawful actions (or inaction), inflict material and/or moral damage on persons, such their actions cannot be equated with the actions (or inaction) of the state itself (or institutions thereof), and state officials, *inter alia*, ministers, who have inflicted damage must be liable in the prescribed manner for their actions by which they have caused the damage.

[...]

... under the Constitution, *inter alia*, Paragraph 3 of Article 5, Paragraph 2 of Article 30, and Paragraph 2 of Article 128 thereof, as well as under the constitutional principles of responsible governance and a state under the rule of law, in order to ensure the proper respect for the interests of all society, it is necessary to create the preconditions for the state, after it has fulfilled (through its institutions) its constitutional duty to compensate a person for the material and/or moral damage inflicted by the unlawful actions (or inaction) of state institutions and officials, *inter alia*, ministers, for obtaining reimbursement for the losses (in whole or in part), suffered due to this by the state, from the state officials, *inter alia*, ministers, who have improperly exercised the powers conferred on them by the Constitution and laws. This is the only way to ensure that the property owned by the state will serve the common welfare of the Nation. Meanwhile, without creating such preconditions, it would not be ensured, *inter alia*, that the state officials, *inter alia*, ministers, who have caused damage would be held liable for their actions according to the established procedure and, thus, that people would have trust in public authority institutions and the state in general; this would be incompatible with the Constitution, *inter alia*, the constitutional principles of responsible governance and the rule of law.

As mentioned before, under the Constitution, if a person has suffered material and/or moral damage as a result of the unlawful actions committed by state institutions or officials, this damage must be compensated for, taking into account the reasonable and justified criteria established by law, in order to determine the amount of this damage. ... the above-mentioned provisions of the official constitutional doctrine are also *mutatis mutandis* applicable to regulating, by means of a law, the duty of the state to compensate for damage caused as a result of the unlawful actions committed by a minister in the exercise of internal administration powers with respect to the ministry and the establishments assigned to the area entrusted to the ministry, as well as to regulating, by means of a law, the procedure for implementing the right of the state to recourse against the person – the minister – who has caused the damage.

8.1. THE CONSTITUTIONAL COURT AS THE INSTITUTION OF CONSTITUTIONAL JUSTICE

The constitutional status of the Constitutional Court (as the institution of constitutional justice)*The Constitutional Court's ruling of 6 June 2006*

The courts that, under the Constitution, implement judicial power in Lithuania must be categorised as belonging not to one, but to two or more (if this, taking account of the Constitution, is established in the respective laws) systems of courts. Under the Constitution and laws, there are three systems of courts in Lithuania at present: (1) the Constitutional Court carries out constitutional judicial control; (2) the Supreme Court of Lithuania, the Court of Appeal of Lithuania, regional courts, and district courts, which are specified in Paragraph 1 of Article 111 of the Constitution, constitute the system of courts of general jurisdiction; (3) under Paragraph 2 of Article 111 of the Constitution, for the consideration of administrative, labour, family, and cases of other categories, specialised courts may be established according to the law; one system of specialised courts, i.e. administrative ones, which is composed of the Supreme Administrative Court of Lithuania and regional administrative courts, is established and is functioning at present (rulings of 13 December 2004, 16 January 2006, 28 March 2006, and 9 May 2006).

[...]

The Constitution defines the procedure for the formation of the Constitutional Court, establishes the grounds and guarantees of the implementation (activity) of the powers of the Constitutional Court, consolidates the status of the justices of the Constitutional Court, etc.

Thus, under the Constitution, the Constitutional Court is the institution of constitutional justice, which carries out constitutional judicial control (rulings of 28 March 2006 and 9 May 2006). The Constitutional Court has held in its acts on more than one occasion that, when deciding, under its competence, on the compliance of lower-ranking legal acts (parts thereof) with higher-ranking legal acts, *inter alia* (and, first of all), with the Constitution, as well as when exercising its other constitutional powers, the Constitutional Court – an autonomous and independent court – administers constitutional justice, as well as guarantees constitutional lawfulness and the supremacy of the Constitution in the legal system (rulings of 12 July 2001, 29 November 2001, 13 December 2004, and 28 March 2006).

It needs to be noted that the title – the Constitutional Court – of the constitutional justice institution, which is assigned the exercise of constitutional judicial control, is *expressis verbis* consolidated in the Constitution itself.

It should be emphasised that, by its constitutional nature, a state power institution that is named a court in the Constitution itself must be regarded as a court, i.e. as a judicial institution.

[...]

The mere fact that there are separate Chapters “Courts” and “The Constitutional Court” in the Constitution is not and may not be the grounds for interpreting that, purportedly ... the Constitutional Court is not a court – part of the judiciary – and exists somewhere outside the boundaries of the judicial system. Such a presumption ... is essentially wrong and completely constitutionally unfounded. On the contrary, the fact that, in the Constitution, there are two separate chapters – Chapter VIII “The Constitutional Court” and Chapter IX “Courts” – does not deny the fact that the Constitutional Court, which, under the Constitution, carries out constitutional judicial control, is part of the judicial system, but it rather emphasises its particular status in the system of the judiciary, as well as in the system of all state institutions exercising state power; in this way, the particularities of the constitutional mission and competence of the Constitutional Court are emphasised.

At the same time, it needs to be noted that there are significant links between courts of general jurisdiction and specialised courts (established under Paragraph 2 of Article 111 of the Constitution) on the one hand, and, on the other hand, the Constitutional Court, the institution of constitutional justice, *inter alia*: every court of general jurisdiction (its judge) and every specialised court (its judge), as a petitioner, has the right to initiate constitutional justice cases at the Constitutional Court on the grounds established in the Constitution (Paragraphs 1, 2, and 3 of Article 106 and Paragraph 2 of Article 110); all courts of general jurisdiction – the Supreme Court of Lithuania, the Court of Appeal of Lithuania, regional

courts, and district courts – as well as specialised courts (Supreme Administrative Court of Lithuania and regional administrative courts), are bound by the fact that, under Article 107 of the Constitution, the decisions on the issues assigned to the competence of the Constitutional Court are final and not subject to appeal; all courts of general jurisdiction and specialised courts are bound by the official constitutional doctrine, which is formed in the jurisprudence of the Constitutional Court, etc. However, as regards the organisational and administrative aspects, the said systems of courts – the Constitutional Court, which carries out constitutional judicial control, and courts of general jurisdiction and specialised courts (established under Paragraph 2 of Article 111 of the Constitution) – are separated in the Constitution.

It should be emphasised that the presumption ... that the Constitutional Court is not a court and does not implement state power is not at all in line with the concept of power and the powers of the Constitutional Court established in the Constitution. The fact that, under the Constitution, the Constitutional Court has the powers to declare legal acts of other institutions that implement state power – the Seimas, the President of the Republic, the Government – to be in conflict with higher-ranking legal acts, first of all, with the Constitution, and, thus, to annul the legal force of such unconstitutional legal acts and to remove them from the Lithuanian legal system for good, as well as the fact that only the Constitutional Court has the constitutional powers to interpret the Constitution officially – to present the concept of the provisions of the Constitution and such a concept is binding on all law-making and law-applying institutions, including the Seimas, the representation of the Nation, clearly shows that the Constitutional Court is an institution implementing state power.

The status of the Constitutional Court and the procedure for the execution of its powers must be established by the Law on the Constitutional Court (Paragraph 2 of Article 102 of the Constitution)

The Constitutional Court's ruling of 25 October 2011

... when interpreting Paragraph 2 of Article 102 of the Constitution, which prescribes that the status of the Constitutional Court and the procedure for the execution of its powers are established by the Law on the Constitutional Court, the Constitutional Court held in its ruling of 28 March 2006 that, under the Constitution, the legislature has the duty to regulate, by means of a law, all relationships in connection with the status, formation, execution of powers (activity), and guarantees of the Constitutional Court, the status of the justices of the Constitutional Court, as well as the execution of decisions adopted by the Constitutional Court; the title of this law – the Law on the Constitutional Court – is *expressis verbis* consolidated in the Constitution. The Constitutional Court also noted that, in itself, such a constitutional legal regulation does not mean that certain relationships connected with the aforementioned relationships may not in general be regulated also by means of other laws.

8.2. THE CONSTITUTIONAL STATUS OF THE JUSTICES OF THE CONSTITUTIONAL COURT

Appointing the justices of the Constitutional Court and the beginning of their term of office (Article 103 and Paragraph 2 of Article 104 of the Constitution); the limitations established on the work and political activities of the justices of the Constitutional Court (Paragraph 3 of Article 104 and Article 113 of the Constitution)

The Constitutional Court's ruling of 2 June 2005

The procedure for the appointment of the justices of the Constitutional Court is *expressis verbis* established in the Constitution.

Paragraph 3 of Article 103 of the Constitution provides that the citizens of the Republic of Lithuania with an impeccable reputation, higher education in law, and not less than a 10-year length of service in the field of law or in a branch of science and education as a lawyer may be appointed as justices of the Constitutional Court. Under Paragraph 1 of the same article, the President of the Republic, the Speaker of the Seimas, and the President of the Supreme Court present candidates for justices of the Constitutional

Court; the Seimas appoints the justices of the Constitutional Court; every three years, one-third of the Constitutional Court is reconstituted.

It needs to be emphasised that, under the Constitution, when the justices of the Constitutional Court are appointed, only the following subjects, *expressis verbis* specified in the Constitution, have the respective powers: (1) the state official (President of the Republic, the Speaker of the Seimas, and the President of the Supreme Court) who proposes a candidate for the post of a justice of the Constitutional Court to the Seimas; (2) the Seimas, which adopts a decision concerning the appointment of a proposed candidate for the post of a justice of the Constitutional Court.

Under the Constitution, no institution and no official has the powers to deny or limit the constitutional right of the President of the Supreme Court (as well as that of other state officials – the President of the Republic and the Speaker of the Seimas (specified in Paragraph 1 of Article 103 of the Constitution) – who submit candidates for justices of the Constitutional Court) to submit to the Seimas a candidate for justices of the Constitutional Court, or the right of the Seimas to appoint a submitted candidate as a justice of the Constitutional Court or not to appoint him/her. If such powers were established by means of a law or another legal act, the preconditions would be created for impeding the reconstitution of the Constitutional Court – an institution of state power consolidated in the Constitution – under the procedure established in the Constitution.

Paragraph 3 of Article 104 of the Constitution provides that the limitations established on work and political activities for the judges of courts also apply to the justices of the Constitutional Court. Under Article 113 of the Constitution, judges may not hold any other elective or appointive office, or work in any business, commercial, or other private establishments or enterprises (Paragraph 1); nor may they receive any remuneration other than the remuneration established for judges and payment for educational or creative activities (Paragraph 1); judges may not participate in the activities of political parties or other political organisations (Paragraph 2).

The said limitations are applied to a justice of the Constitutional Court from the day when he/she takes up office. Under Paragraph 2 of Article 104 of the Constitution, before entering office, the justices of the Constitutional Court take an oath at the Seimas to be faithful to the Republic of Lithuania and the Constitution.

[...]

The Constitution establishes such a legal regulation under which an appointed justice of the Constitutional Court must remove incompatibilities with the office of a justice of the Constitutional Court (Paragraph 3 of Article 104 and Article 113 of the Constitution) until he/she takes an oath at the Seimas. If the removal of the said incompatibilities depends upon decisions of certain institutions (officials), these institutions (officials) have the duty to adopt the respective decisions until the appointed justice of the Constitutional Court takes an oath at the Seimas. Otherwise, the appointed justice of the Constitutional Court would be impeded from taking the office of a justice of the Constitutional Court; thus, the reconstitution of the Constitutional Court – an institution of state power consolidated in the Constitution, which must be carried out in accordance with the procedure established in the Constitution, would be impeded.

It needs to be stressed that the Constitution does not contain any provisions requiring that a person nominated for the post of a justice of the Constitutional Court should, prior to voting on his/her nomination for the said post at the Seimas, refuse his/her occupation or the office that he/she is holding, or remove other incompatibilities with the office of a justice of the Constitutional Court that are specified in the Constitution.

It also needs to be emphasised that an appointed justice of the Constitutional Court, as long as he/she has not taken an oath at the Seimas in accordance with the established procedure, does not hold the office of a justice of the Constitutional Court. At that time, the office of a justice of the Constitutional Court is held by the justice of the Constitutional Court whose term of office is expiring.

[...]

Thus, if a person appointed as a justice of the Constitutional Court holds the office of a judge of a certain court of the Republic of Lithuania at the time of his/her appointment, he/she must be released from his/her duties before his/her oath at the Seimas. If a person who is appointed as a justice of the Constitutional Court holds the office of a justice of the Supreme Court at the time of his/her appointment, the President of the Republic has the constitutional duty to make the submission that the Seimas release this appointed justice of the Constitutional Court from the office of a justice of the Supreme Court before he/she takes the oath of a justice of the Constitutional Court at the Seimas, while the Seimas has the constitutional duty to release the said person from his/her duties before his/her oath at the Seimas. Otherwise, the appointed justice of the Constitutional Court would be impeded from taking the office of a justice of the Constitutional Court; thus, the reconstitution of the Constitutional Court – an institution of state power consolidated in the Constitution, which must be carried out in accordance with the procedure established in the Constitution, would be impeded.

The cessation of the powers of a justice of the Constitutional Court (Article 108 of the Constitution)

The Constitutional Court's decision of 15 May 2009

Under Article 108 of the Constitution, the powers of a justice of the Constitutional Court cease: upon the expiry of the term of powers (Item 1); upon his/her death (Item 2); upon his/her resignation (Item 3); when he/she is incapable of holding office due to the state of his/her health (Item 4); when the Seimas removes him/her from office in accordance with the procedure for impeachment proceedings (Item 5).

Under Articles 74 and 116 of the Constitution, the President and justices of the Supreme Court, the President and judges of the Court of Appeal, and, under Article 74 of the Constitution, also the President and justices of the Constitutional Court, who grossly violate the Constitution or breach their oath, or are found to have committed a crime, may be removed from office by the Seimas according to impeachment proceedings.

Under the Constitution, one of the grounds for the release of judges from their duties (cessation of the powers of judges) is the expiry of the term of the powers of a judge.

It needs to be noted that the Constitution defines the consequences of the juridical fact of the expiry of the term of the powers of a judge or a justice of the Constitutional Court by means of different phrases: “judges are released from their duties according to the procedure established by law” (Article 115), “the powers of a justice of the Constitutional Court shall cease” (Article 108).

When interpreting the phrase “judges are released from their duties according to the procedure established by law” of the Constitution, it needs to be noted that this phrase means that, after the juridical fact – the expiry of the term of the powers of a judge – takes place, the institution that is provided for in the Constitution, i.e. the President of the Republic, or both the President of the Republic and the Seimas, has the duty to verify that such a juridical fact has taken place and, upon stating the existence of this fact, to adopt, in accordance with the procedure established by law, the respective decision (i.e. an individual act of the application of law) whereby the judge or President of a court whose term of the powers has expired would be released from the office of the judge or President of that court.

When interpreting the phrase “the powers of a justice of the Constitutional Court shall cease” of the Constitution, it needs to be noted that, after the juridical fact – the expiry of the term of the powers of a justice of the Constitutional Court – takes place, no institution has the duty to state the existence of such a juridical fact and adopt the respective decision (i.e. an individual act of the application of law) whereby a justice of the Constitutional Court would be released from his/her duties.

It needs to be noted that the Constitution consolidates the final list of grounds for releasing judges from their duties (i.e. the cessation of powers) and that this list must not be expanded by means of laws or other legal acts (ruling of 22 October 2007).

The length of the term of office of the justices of the Constitutional Court (Paragraph 1 of Article 103 of the Constitution)

The Constitutional Court's ruling of 29 June 2010

... the justices of the Constitutional Court also differ from other judges of courts of general and specialised competence from the aspect of the term of their office. Under Paragraph 1 of Article 103 of the Constitution, the justices of the Constitutional Court are appointed for a single nine-year term of office. Under the Constitution, the Law on Courts establishes the terms of office of judges of both courts of general competence and specialised courts. ... while regulating the relationships of the social (material) guarantees of judges after the powers of judges cease, *inter alia*, when differentiating these guarantees, account must be taken of the fact that the classification of courts as belonging not to one, but, rather, to several (at present – three) systems of courts stems from the Constitution; a separate system of courts is comprised of the Constitutional Court, characterised by its own particularities, *inter alia*, from the aspect of the term of office of the justices of the Constitutional Court.

... the legislature, while regulating the relationships of the social (material) guarantees of judges upon the expiry of their term of powers, must also take account of the fact that the justices of the Constitutional Court differ from judges of other courts as regards their constitutional status, *inter alia*, the term of powers. Otherwise, the constitutional concept of these social (material) guarantees, under which the social (material) guarantees of judges must be differentiated by taking account, *inter alia*, of the specificity of the system of courts and the particularities of the status of judges of the systems of courts, would be deviated from.

The immunity of justices of the Constitutional Court (Paragraph 4 of Article 104 of the Constitution)

The Constitutional Court's ruling of 9 March 2020

The immunity of the justices of the Constitutional Court is consolidated in Paragraph 4 of Article 104, which is in Chapter VIII “The Constitutional Court” of the Constitution; under the said article, the justices of the Constitutional Court have the same rights concerning the inviolability of their person as the members of the Seimas. In this context, it should be noted that, according to Paragraph 1 of Article 104 of the Constitution, while in office, the justices of the Constitutional Court are independent of any other state institution, person, or organisation and follow only the Constitution of the Republic of Lithuania. Thus, the immunity of the justices of the Constitutional Court, as consolidated in Paragraph 4 of Article 104 of the Constitution, is the guarantee of their independence while they are in office.

In this context, it should be noted that Paragraph 1 of Article 62 of the Constitution provides that the person of a member of the Seimas is inviolable. The Constitutional Court has held that Paragraph 1 of Article 62 of the Constitution is related to Paragraph 2 of this article, under which the members of the Seimas may not be held criminally responsible or be detained, or have their liberty restricted otherwise, without the consent of the Seimas (ruling of 8 May 2000). The Constitutional Court has also held that, although the Constitution provides for the additional guarantees of the inviolability of a member of the Seimas compared with the guarantees of the inviolability of an individual, the scope of the immunity of a member of the Seimas is, nevertheless, narrower than that of the President of the Republic, i.e. the right of a member of the Seimas to liberty and the inviolability of his/her person during his/her term of office may be limited; as mentioned before, under Paragraph 2 of Article 62 of the Constitution, this can only be done with the consent of the Seimas (ruling of 8 May 2000).

The Constitutional Court has also held that Paragraph 2 of Article 62 of the Constitution consolidates the additional guarantees of the inviolability of the person of a member of the Seimas, which are necessary for the proper performance of his/her duties (*inter alia*, the rulings of 8 May 2000, 25 January 2001, and 27 April 2016).

In view of this, it should be noted that, under Paragraph 4 of Article 104 of the Constitution, a justice of the Constitutional Court may not be held criminally responsible or be detained, or have his/her liberty restricted otherwise, without the consent of the Seimas.

It should also be noted that, under Paragraph 4 of Article 104 of the Constitution as interpreted in conjunction with Paragraph 1 of Article 104 of the Constitution, the immunity of the justices of the

Constitutional Court, in the same way as the immunity of judges as consolidated in Paragraph 2 of Article 114 of the Constitution, is functional in nature: its purpose is to guarantee the independence of the justices of the Constitutional Court, so that the administration of constitutional justice is ensured and the supremacy of the Constitution in the legal system, as well as constitutional lawfulness, is guaranteed. Thus, there are no constitutional grounds for the scope of the immunity of the justices of the Constitutional Court, which is consolidated in Paragraph 4 of Article 104 of the Constitution, to be interpreted differently from the scope of the immunity of judges, which is consolidated in Paragraph 2 of Article 114 of the Constitution. However, differently from Paragraph 2 of Article 114 of the Constitution, Paragraph 4 of Article 104 of the Constitution does not provide for the possibility of holding a justice of the Constitutional Court criminally responsible or detaining him/her, or restricting his/her liberty otherwise, with the consent of the President of the Republic in the period between the sessions of the Seimas. It should also be noted that the requirement, under Paragraph 4 of Article 104 of the Constitution, to receive the consent of the Seimas in order that the justices of the Constitutional Court could be held criminally responsible or be detained, or have their liberty restricted otherwise, is consolidated for the purpose of enabling the maximum protection of the justices of the Constitutional Court against unfoundedly being held criminally responsible, being detained, or having their liberty restricted otherwise in cases where it would thereby be sought to influence the decisions of the justices.

8.3. THE POWERS OF THE CONSTITUTIONAL COURT

8.3.1. The powers of the Constitutional Court to exercise control over the constitutionality of legal acts

The powers of the Constitutional Court to investigate the compliance of legal acts with higher-ranking legal acts (Article 105 of the Constitution)

The Constitutional Court's ruling of 5 April 2000

... under Article 105 of the Constitution, if a petition substantiated with legal reasoning is filed by the subjects pointed out in Article 106 of the Constitution, the Constitutional Court may and must consider and adopt decisions on the conformity of any law or legal act adopted by the Seimas with the Constitution, as well as decisions on the conformity of any act adopted by the President of the Republic or by the Government with the Constitution and laws, irrespective of the fact whether such a legal act is (would be) marked "top secret", "secret", "confidential", or marked in any other way.

The powers of the Constitutional Court to declare the unconstitutionality of a law that is not impugned by a petitioner but on which an impugned substatutory act is based (Article 105 of the Constitution)

The Constitutional Court's ruling of 29 November 2001

Under Article 105 of the Constitution, the Constitutional Court considers and adopts decisions on whether legal acts are in conflict with the Constitution. Thus, the Constitutional Court implements constitutional justice. The implementation of constitutional justice implies that a legal act (part thereof) that is in conflict with the Constitution must be removed from the legal system. Therefore, after it has established that a law the compliance of which with the Constitution is not challenged by a petitioner, but upon which an impugned substatutory act is based, is in conflict with the Constitution, the Constitutional Court must state that such a law is unconstitutional. Such an obligation of the Constitutional Court stems from the Constitution; in this way, the supremacy of the Constitution is ensured.

The powers of the Constitutional Court to declare the unconstitutionality of such provisions of a law not impugned by a petitioner that regulate part of the relationships covered by an impugned law

The Constitutional Court's ruling of 14 January 2002

Having found that the provisions of a law whose compliance with the Constitution is not impugned by a petitioner, but which regulate part of the social relationships covered by an impugned law, are in conflict with the Constitution, the Constitutional Court must state that such provisions are unconstitutional.

The Constitutional Court investigates the compliance of impugned legal acts with the Constitution as an integral and harmonious system

The Constitutional Court's ruling of 30 May 2003

In cases where, following a received petition, the Constitutional Court investigates whether the impugned legal act (part thereof) is in conflict with the articles (parts thereof) of the Constitution indicated in the petition, it at the same time investigates whether the impugned legal act (part thereof) is in conflict with the Constitution – an integral and harmonious system (ruling of 24 December 2002).

In its ruling of 13 June 2000, the Constitutional Court held that ... the Constitutional Court, having found that an impugned legal act (part thereof) is in conflict with the articles (parts thereof) of the Constitution not indicated by the petitioner, has the powers to state this fact.

The recognition that legal acts are in conflict with the Constitution in terms of their form

The Constitutional Court's ruling of 13 December 2004

... such failure to adhere to the form of a legal act where the Constitution requires that certain relationships be regulated by means of a law, but they are still regulated by means of a substatutory act (irrespective of whether such relationships are, from any aspect, additionally regulated in a law and the legal regulation laid down in a substatutory act competes with the legal regulation established in that law, or irrespective of the fact that no law regulates such relationships at all), may provide the sufficient grounds for declaring such a substatutory legal act unconstitutional. Under the Constitution, it is the Constitutional Court that decides whether the substatutory legal acts of the Seimas, the President of the Republic, or the Government, in terms of their form, are in conflict with the Constitution. When making such a decision, the Constitutional Court assesses in every case all circumstances of the case, *inter alia*, the place of the reviewed legal regulation in the entire legal system, its objective, as well as the intentions of the respective law-making subject, the development of the legal regulation of the respective relationships and its changes before the legal act at issue was passed (legislative history), etc.

It should also be stressed that, in cases where substatutory legal acts are ruled to be in conflict with the Constitution in terms of their form (due to the fact that they regulate such relationships that may be regulated only by means of a law) and may no longer be applied, it is necessary to pay regard to the requirement, arising from the Constitution, to assess whether other values protected by the Constitution would be violated, or whether the balance among the values consolidated, protected, and defended by the Constitution would be disturbed in the case of failure to protect and defend those rights of persons that were acquired during the period of the validity of the said substatutory legal acts. In these special cases, the legislature, having assessed all circumstances and having found that this is necessary, is under the constitutional obligation to establish such a legal regulation that would provide for the possibility of protecting and defending, fully or partially, the rights of persons who had obeyed law, followed the requirements of laws, and trusted in the state and its law in cases where their acquired rights had arisen from the legal acts that were subsequently ruled to be in conflict with the Constitution in terms of their form (due to the fact that they regulated such relationships that could be regulated only by means of a law); such a legal regulation established by the legislature must ensure that the principle of justice, enshrined in the Constitution, would not be derogated from.

The powers of the Constitutional Court to investigate the compliance of all laws and other acts adopted by the Seimas, the President of the Republic, or the Government with all higher-ranking legal acts (Paragraph 1 of Article 102 of the Constitution)

The Constitutional Court's ruling of 28 March 2006

... Paragraph 1 of Article 102 of the Constitution may not be interpreted (by applying only the linguistic method, literally) as meaning that it provides a comprehensive and final list of legal acts whose investigation in terms of their compliance with higher-ranking legal acts, *inter alia* (and, first of all), with the Constitution, as well as the adoption of the respective decisions, is assigned, under the Constitution, to the jurisdiction of the Constitutional Court. Paragraph 1 of Article 102 of the Constitution should be interpreted by taking account of the whole context of the constitutional legal regulation: *inter alia*, by paying regard to the principle of the separation of powers; the mission and place of the Constitutional Court in the system of state institutions that exercise judicial power (and those that exercise state power in general) and are consolidated in the Constitution; the constitutionally consolidated institution of constitutional laws (which, under Constitution, have higher legal force than ordinary laws); the provisions of the Constitution under which laws (provisions thereof) or other legal acts may also be adopted by referendum (Paragraph 1 of Article 9, Paragraph 4 of Article 69, and Paragraphs 3 and 4 of Article 71 of the Constitution); the constitutional duty of the President of the Republic to perform everything with which he/she is charged by the Constitution and laws (Paragraph 2 of Article 77 of the Constitution); the constitutional duty of the Government to execute laws, the resolutions of the Seimas on the implementation of laws, as well as the decrees of the President of the Republic (Item 2 of Article 94 of the Constitution); the principle of the supremacy of the Constitution and a state under the rule of law, which, in addition to most other things, imply the hierarchy of all legal acts and the prohibition that arises from the said hierarchy on establishing in lower-ranking legal acts any such a legal regulation that would compete with a legal regulation established in higher-ranking legal acts (first of all, in the Constitution itself) or on applying any legal acts that are in conflict with higher-ranking legal acts; as well as by paying regard to the possibility of removing from the legal system such legal acts (parts thereof) that do not meet the said requirements, thus, by taking into consideration both the mission of constitutional judicial control as a constitutional institution and the contextual meaning of the constitutional provisions that consolidate it. In this way interpreting Paragraph 1 of Article 102 of the Constitution in the context of the overall constitutional legal regulation, it should be held that, under the Constitution, the Constitutional Court has the exclusive competence to investigate and decide on whether any act adopted by the Seimas, the President of the Republic, or the Government, as well as any act (part thereof) adopted by referendum, is in conflict with any higher-ranking act, *inter alia* (and, first of all), with the Constitution, namely: whether any constitutional law (part thereof) is in conflict with the Constitution; whether any law (part thereof) or the Statute of the Seimas (part thereof) is in conflict with the Constitution and constitutional laws; whether any substatutory legal act (part thereof) adopted by the Seimas is in conflict with the Constitution, constitutional laws, laws, and the Statute of the Seimas; whether any act (part thereof) adopted by the President of the Republic is in conflict with the Constitution, constitutional laws, and laws; and whether any act (part thereof) adopted by the Government is in conflict with the Constitution, constitutional laws, and laws.

[...]

... a different, literal interpretation of Paragraph 1 of Article 102 of the Constitution would mean that, purportedly, the Constitution tolerates its own disregard when certain legal acts (for example, constitutional laws or the Statute of the Seimas) are adopted, that, purportedly, under the Constitution, it is possible to disregard constitutional laws when laws are passed and to disregard laws and constitutional laws when certain substatutory legal acts (for example, those of the Seimas) are passed, and that, purportedly, under the Constitution, it is possible to disregard the Constitution when laws (provisions thereof) or other legal acts are adopted by referendum. Thus, lower-ranking legal acts (parts thereof) that have one-off (ad hoc) application and are passed by the Seimas, the President of the Republic, or the Government would, in general, avoid the verification of their compliance with higher-ranking legal acts, *inter alia* (and, first of

all), with the Constitution. A literal (let alone narrowing) interpretation of Paragraph 1 of Article 102 of the Constitution would be completely unreasonable, since it would deny the principle of the supremacy of the Constitution, the constitutional principle of a state under the rule of law, the hierarchy of all legal acts, which stems from the Constitution (and which implies, *inter alia*, the compliance of substatutory legal acts with laws), the provision of Paragraph 1 of Article 7 of the Constitution that any law or other act that contradicts the Constitution is invalid, the provision of Paragraph 2 of Article 5 of the Constitution that the scope of powers is limited by the Constitution, and the provision of Paragraph 1 of Article 6 of the Constitution that everyone may defend his/her rights by invoking the Constitution. If merely the said literal interpretation of Paragraph 1 of Article 102 of the Constitution were followed, the preconditions would also be created for violating other values (*inter alia*, the constitutional rights of a person) that are consolidated, defended, and protected by the Constitution. In this context, it should also be noted that, if the Constitution were interpreted only literally by applying the linguistic method, it could not be the supreme law of Lithuania, as it would be virtually identified with its textual form – the letter of the Constitution would be made absolute and the spirit of the Constitution would be ignored.

The Constitutional Court investigates a legal regulation that is consolidated in legal acts both explicitly and implicitly

The Constitutional Court's decision of 8 August 2006

Legal acts (including those whose compliance with higher-ranking legal acts is decided by the Constitutional Court according to the Constitution) are sources of law created by the respective institutions of public power or by referendum; such legal acts consolidate law – legal provisions set out in a certain textual form. Legal acts as sources of law are passed, amended (supplemented), and repealed by means of decisions adopted by the respective institutions or by general vote (referendum). Thus, legal acts (including those whose compliance with higher-ranking legal acts is decided by the Constitutional Court according to the Constitution) are always the results of certain institutional law-making decisions (actions) (in the broadest meaning of the term “institutional”, which also includes legal acts adopted by referendum). If there is no law-making decision (on a legal regulation of certain social relationships), a legal act cannot be passed, amended (supplemented), or repealed. This is what makes legal acts different from such sources of law as, for instance, legal customs, which come into being (are created) not as a result of institutional law-making decisions (actions), but on other grounds.

All legal acts are expressed in a certain textual form and have certain linguistic expression. However, as held by the Constitutional Court, it is impossible to treat law solely as a text in which certain legal provisions and rules of behaviour are set out *expressis verbis*; it is impossible to treat legal reality solely in its textual form – only as an aggregate of its explicit provisions (ruling of 25 May 2004). Therefore, while investigating the compliance of legal acts (parts thereof) passed by the Seimas, the President of the Republic, or the Government and those adopted by referendum with higher-ranking legal acts, *inter alia* (and, first of all), with the Constitution, the Constitutional Court investigates a legal regulation that is explicitly, *expressis verbis*, consolidated in those legal acts (parts thereof), as well as such a legal regulation that is consolidated in those legal acts (parts thereof) implicitly and is derived from explicit legal provisions in the course of interpreting law.

When investigating the compliance of legal acts (parts thereof) passed by the Seimas, the President of the Republic, or the Government and those adopted by referendum with higher-ranking legal acts, *inter alia* (and, first of all), with the Constitution, the Constitutional Court must establish and, if this is necessary in view of the logic of a constitutional justice case under consideration, state whether a certain legal regulation laid down in the respective lower-ranking legal act (part thereof) is consolidated explicitly or is not consolidated explicitly. It needs to be emphasised that the non-establishment of a certain explicit legal regulation (lack of a legal regulation, the absence of the respective explicit provisions) in a legal act (part thereof) under investigation in a constitutional justice case does not yet mean that the said legal act (part thereof) does not regulate the respective social relationships at all, nor that those social relationships are not regulated by any other legal acts. It also needs to be noted that the non-establishment of a certain explicit

legal regulation in a reviewed legal act (part thereof) may be related to various legal situations: in some cases, the non-establishment of a certain explicit legal regulation precisely in a concrete legal act (precisely in a concrete part thereof) is determined by the fact that the respective legal provisions are explicitly or implicitly consolidated in another legal act (or in other parts of the same legal act); in other cases, the absence of explicit legal norms regulating certain social relationships in a concrete legal act (part thereof), provided they are neither explicitly nor implicitly consolidated in other legal acts (or in other parts of the same legal act), should be treated as the establishment of a certain implicit legal regulation that supplements and extends the explicit legal regulation (in some cases, it should be treated as the establishment of a legal regulation that consolidates the behaviour opposite to the established one); thus, in certain cases, it is possible to “discover” in a reviewed legal act (in particular, in part thereof) implicit provisions regulating the respective social relationships and supplementing and extending the explicit legal regulation; still, in some other cases, the said non-establishment of an explicit legal regulation in a concrete legal act (part thereof), provided that the respective legal regulation is neither explicitly nor implicitly established in other legal acts (or in other parts of the same legal act), means that, in that legal act (part thereof), there is a legal gap that may in its turn be treated either as a legislative omission, i.e. a legal gap prohibited by the Constitution (or by some other higher-ranking legal act), or as a legal gap that may not be interpreted as a legislative omission, since the Constitution (or any other higher-ranking legal act) does not require that the respective legal regulation must be introduced, nor does it require that it must be established precisely in that legal act (precisely in that part thereof).

It has been mentioned that the non-establishment of a certain explicit legal regulation precisely in a reviewed legal act (in precisely a reviewed part thereof) may be determined by the fact that the respective legal regulation is explicitly or implicitly consolidated in another legal act (or in other parts of the same legal act). Such a legal act (part thereof) may be ruled to be in conflict with a higher-ranking legal act, *inter alia* (and, first of all), with the Constitution because of the fact that a certain legal regulation is not consolidated in precisely that legal act (part thereof) only in cases where the said higher-ranking legal act imperatively demands that the respective legal regulation be established in precisely the said reviewed legal act (in precisely the reviewed part thereof). In this context, it needs to be mentioned that the Constitution imperatively demands that certain social relationships be regulated by means of a constitutional law or a law and, sometimes, for example, in Article 93, Paragraph 2 of Article 102, and Paragraph 4 of Article 11 thereof, it even *expressis verbis* indicates the title of the law.

It was also mentioned that the non-establishment of an explicit legal regulation in a reviewed legal act (part thereof), provided that the respective legal regulation is neither explicitly nor implicitly established in other legal acts (or in other parts of the same legal act), may be treated as the establishment of a certain implicit legal regulation that supplements and extends the explicit legal regulation (in some cases, it may be treated as the establishment of a legal regulation that consolidates the behaviour opposite to the established one): although such an implicit legal regulation is not *expressis verbis* established, it is possible to derive it consistently from explicit legal norms in the course of interpreting law. For instance, in private law, in which, as is generally known, the principle of general permission is dominant, under which “everything that is not forbidden is allowed”, the non-establishment of a certain explicit prohibition is, as a rule, treated as permission of certain behaviour (which is not explicitly prohibited); meanwhile, in public law, in which, as is generally accepted, the opposite principle of special permission (or general prohibition) is dominant, under which “everything that is not allowed is forbidden”, the absence of a certain explicit permission should, as a rule, be interpreted as a prohibition on certain behaviour (which is not explicitly permitted). If such a legal regulation established implicitly, but not explicitly, in a lower-ranking legal act consolidates certain behaviour that is different from that established in a certain higher-ranking legal act, *inter alia* (and, first of all), in the Constitution, this may serve as the grounds for the Constitutional Court, by its ruling, to declare (by reasonably stating the existence of the said implicit legal regulation) the said lower-ranking legal act (part thereof) to be in conflict with the said higher-ranking legal act, *inter alia* (and, first of all), with the Constitution, insofar as the said lower-ranking legal act (part thereof) does not explicitly establish a certain legal regulation, and to remove that implicitly established legal regulation from

the legal system. In this context, it should be mentioned that, in the jurisprudence of the Constitutional Court, legal acts (parts thereof) are rather often ruled to be in conflict with the Constitution insofar as those legal acts (parts thereof) do not explicitly establish a certain legal regulation.

The absence of explicit legal provisions regulating certain social relationships in a legal act (part thereof), if the respective legal regulation is neither explicitly nor implicitly established in other legal acts (or in other parts of the same legal act), should be treated as a legal gap – a *lacuna legis*. Having investigated the compliance of a legal act (part thereof) adopted by the Seimas, the President of the Republic, or the Government or the compliance of a legal act (part thereof) adopted by referendum with higher-ranking legal acts, *inter alia* (and, first of all), with the Constitution, the Constitutional Court may also hold that there is a legal gap in the respective legal act (part thereof).

The powers of the Constitutional Court to investigate the constitutionality of legal acts, including such legal acts that establish the social (material) guarantees of judges and consolidate the powers of the Constitutional Court, proceedings at the Constitutional Court, as well as the general elements and particularities of the status of the justices of the Constitutional Court (Paragraph 1 of Article 102 of the Constitution)

The Constitutional Court's ruling of 22 October 2007

... as the Constitutional Court held in its ruling of 12 July 2001, the Constitution does not provide that the Constitutional Court is permitted not to consider certain laws and other legal acts; the Constitutional Court must consider the constitutionality of all the legal acts specified in Paragraph 1 of Article 102 of the Constitution; thus, the Constitutional Court must consider the constitutionality of such legal acts whereby the social (material) guarantees of judges of the courts of the Republic of Lithuania, *inter alia*, the state pensions of judges, are established. Such powers of the Constitutional Court stem from the Constitution and are related to its constitutional duty to ensure the supremacy of the Constitution in the legal system. The Constitutional Court also has such powers in cases where an impugned legal regulation is designed to consolidate the powers of the Constitutional Court itself, proceedings at the Constitutional Court, and the general elements (which are also typical of judges of other courts) and particularities (*inter alia*, powers, guarantees) of the status of the justices of the Constitutional Court.

The powers of the Constitutional Court to investigate factual circumstances; the powers of the Constitutional Court to investigate the compliance of acts adopted by the President of the Republic with the Constitution and laws

The Constitutional Court's ruling of 20 December 2007

The Constitutional Court, when considering a constitutional justice case according to the Constitution ... has the powers, if required, to investigate factual circumstances that are significant for the decision of the case (decisions of 15 December 2006 and 17 January 2007). It is also stated in the jurisprudence of the Constitutional Court that, “under the Constitution, the Constitutional Court has the powers to investigate the compliance of acts adopted by the President of the Republic with the Constitution and laws irrespective of whether these acts are of an individual or normative character, or whether they are of one-off (ad hoc) application or permanent validity”, also that, “If the Constitution or laws provide for certain requirements that must be followed (that must be fulfilled) in the course of issuing an act of the President of the Republic, the Constitutional Court, when deciding whether an act adopted by the President of the Republic is in conflict with the Constitution and laws, must also investigate whether the said requirements have been followed (fulfilled), since, if such factual circumstances were not established, it would also be impossible to investigate the compliance of the act of the President of the Republic with the Constitution”, as well as that, “under the Constitution, there may not be any such a situation where the Constitutional Court may not investigate any such acts of the President of the Republic that have been issued by him/her while implementing the powers established for the President of the Republic, as the Head of State, in the Constitution and laws” (ruling of 30 December 2003 ...).

The powers of the Constitutional Court to declare the unconstitutionality of such provisions of a law not impugned by a petitioner that regulate part of the relationships covered by an impugned law

The Constitutional Court's ruling of 2 March 2009

One of the essential elements of the constitutional principle of a state under the rule of law is the principle whereby a legal act that is in conflict with a higher-ranking legal act must not be applied. The Constitutional Court has held that, while administering justice, courts must invoke only those laws and legal acts that are not in conflict with the Constitution; courts must not apply a law that is in conflict with the Constitution (rulings of 13 December 2004, 16 January 2006, and 27 June 2007). Having found that the provisions of a law whose compliance with the Constitution is not impugned by a petitioner, but which regulate part of the social relationships covered by an impugned law, are in conflict with the Constitution, the Constitutional Court must state that such provisions are unconstitutional (rulings of 29 November 2001, 14 January 2002, 19 June 2002, and 27 June 2007). The implementation of constitutional justice implies that a legal act (part thereof) that conflicts with the Constitution must be removed from the legal system (ruling of 29 November 2001).

The powers of the Constitutional Court to investigate the compliance of legal acts with higher-ranking legal acts (Paragraph 1 of Article 102 of the Constitution)

The Constitutional Court's ruling of 13 May 2010

Under Paragraph 1 of Article 102 of the Constitution, the Constitutional Court has the exclusive constitutional competence to investigate and decide on whether any act adopted by the Seimas, the President of the Republic, or the Government, or whether any act (part thereof) adopted by referendum is in conflict with any higher-ranking legal act, *inter alia* (and, first of all), with the Constitution (rulings of 28 March 2006 and 6 June 2006, the decision of 8 August 2006, and the ruling of 24 October 2007). It needs to be noted that the Constitutional Court investigates, precisely, whether legal acts adopted by state institutions (Seimas, the President of the Republic, or the Government) are in conflict with higher-ranking legal acts, *inter alia* (and, first of all), with the Constitution, but it does not investigate the non-adoption of law-making decisions by the said state institutions, i.e. the avoidance of or delay in adopting such decisions, or failure to act that is determined by other motives (decision of 8 August 2006).

Assessing the constitutionality of such substatutory acts adopted by the Seimas by which the will of the Seimas regarding a future legal regulation is expressed

The Constitutional Court's ruling of 28 September 2011

... the implementation of constitutional justice determines the fact that the Constitutional Court also has the constitutional powers to investigate and decide on the constitutionality of such provisions of substatutory legal acts of the Seimas (*inter alia*, those of constituent parts of such acts) that express the will of the Seimas on a future legal regulation governing certain social relationships and are the basis for drafting and adopting the respective legal acts. The compliance of the content of such substatutory acts of the Seimas with the provisions of the Constitution and constitutional principles is among the important preconditions for the constitutionality of the legal regulation formed on the basis of such acts.

Thus, the constitutionality of the provisions of substatutory acts (*inter alia*, constituent parts thereof) of the said nature and purpose adopted by the Seimas where such provisions do not consolidate any legal regulation (legal norms) that has (have) direct influence on legal relationships may be assessed from the aspect of the compliance of their content, on the basis of which law-making processes should take place, with the Constitution.

The powers of the Constitutional Court to investigate factual circumstances

The Constitutional Court's decision of 10 November 2011

... although the Constitutional Court, when considering a constitutional justice case under the Constitution ... has the powers to investigate, if required, factual circumstances that are significant for the decision of the case (ruling of 20 December 2007 and the decisions of 15 December 2006 and 17 January 2007), in a situation where the petitioner is a court (which, when considering cases and seeking to establish the truth, must, under the Constitution and laws, be active and has broad powers and procedural instruments to establish such factual circumstances upon which the doubt over the compliance of an impugned legal act with the Constitution and/or laws is based), the Constitutional Court should investigate those factual circumstances only insofar as this is necessary to verify or specify factual circumstances established by the petitioner.

The Constitutional Court does not investigate the compliance of a substatory legal act with such provisions of a law that are themselves in conflict with the Constitution

The Constitutional Court's ruling of 16 December 2013

The Constitutional Court has held that, while administering justice, a court must follow only such laws and other legal acts that are not in conflict with the Constitution; a court must not apply a law that is in conflict with the Constitution (rulings of 13 December 2004, 16 January 2006, 27 June 2007, 2 March 2009, and 7 September 2010). The Constitutional Court has also held that the presumption that a substatory legal act must be in line with an unconstitutional law would be erroneous in substance; such a presumption would deny the concept (consolidated in the Constitution) of the hierarchy of legal acts, at the top of which is the Constitution; thus, such a presumption would distort the very essence of constitutional justice (rulings of 16 January 2007, 27 June 2007, 17 December 2007, 22 June 2009, 9 February 2010, and 7 September 2010).

The powers of the Constitutional Court to hold that such provisions of the Statute of the Seimas that are not impugned by the petitioner but regulate the procedure for adopting an impugned law are in conflict with the Constitution

The Constitutional Court's ruling of 24 January 2014

The Constitutional Court has held on more than one occasion that, having found that the provisions of a law whose compliance with the Constitution is not impugned by the petitioner, but which regulate part of the relationships covered by an impugned law, are in conflict with the Constitution, the Constitutional Court must state that such provisions are unconstitutional. This should be *mutatis mutandis* applied with regard to the provisions of the legal act – the Statute of the Seimas – that regulate the procedure of the adoption of an impugned law.

The powers of the Constitutional Court to investigate the compliance of a resolution of the Seimas to call a referendum or not to call a referendum with the Constitution (Paragraph 1 of Article 102 and Paragraph 1 of Article 105 of the Constitution)

The Constitutional Court's ruling of 11 July 2014

... Under Paragraph 1 of Article 102 and Paragraph 1 of Article 105 of the Constitution, a resolution of the Seimas to call a referendum or not to call a referendum may be an object of constitutional review.

The powers of the Constitutional Court to investigate the compliance of legal acts adopted by referendum with higher-ranking legal acts (Paragraph 1 of Article 102 of the Constitution)

The Constitutional Court's ruling of 11 July 2014

... in interpreting Paragraph 1 of Article 102 of the Constitution in the context of the constitutional legal regulation, the Constitutional Court has held on more than one occasion that, under the Constitution, the Constitutional Court has the exclusive competence to investigate and decide, *inter alia*, whether any act (part thereof) adopted by referendum is in conflict with any higher-ranking act, *inter alia* (and, first of all), with the Constitution (rulings of 28 March 2006, 6 June 2006, 24 October 2007, and 13 May 2010).

The powers of the Constitutional Court to state that the legal regulation impugned by the petitioner is in conflict with the Constitution from the aspect other than that indicated by the petitioner

The Constitutional Court's ruling of 22 September 2015

... after the Constitutional Court establishes that an impugned legal regulation is unconstitutional from the aspect other than that indicated by the petitioner, the Constitutional Court must state that such a legal regulation is in conflict with the Constitution from the aspect not indicated by the petitioner. The implementation of constitutional justice implies that a legal act (part thereof) that conflicts with the Constitution must be removed from the legal system (*inter alia*, the rulings of 29 November 2001 and 11 June 2015).

The powers of the Constitutional Court to declare the unconstitutionality of provisions that are not impugned by the petitioner but are consolidated in the same legal act whose other provisions are impugned by the petitioner

The Constitutional Court's ruling of 29 September 2015

The Constitutional Court has held that, if it finds that provisions whose compliance with the Constitution is not impugned by the petitioner, but which are consolidated in the same legal act whose other provisions are impugned by the petitioner in terms of their constitutionality, it must state that the said provisions that are not impugned by the petitioner are unconstitutional (rulings of 11 July 2014 and 11 June 2015). The implementation of constitutional justice implies that a legal act (part thereof) that conflicts with the Constitution must be removed from the legal system (*inter alia*, the rulings of 29 November 2001 and 22 September 2015).

The powers of the Constitutional Court to declare the unconstitutionality of provisions that are not impugned by the petitioner but are consolidated in the same law against whose other provisions the compliance of a substatory act is impugned

The Constitutional Court's ruling of 2 March 2018

The Constitutional Court has held that, if it finds the unconstitutionality of provisions that are not impugned by the petitioner but are consolidated in the same legal act whose other provisions are impugned by the petitioner in terms of their constitutionality, it must state that the said provisions that are not impugned by the petitioner have been found to be unconstitutional (rulings of 11 July 2014, 11 June 2015, and 29 September 2015). This also applies to provisions that are not impugned by the petitioner but are laid down in the same law against whose other provisions the compliance of a substatory act is impugned. The implementation of constitutional justice implies that a legal act (part thereof) that is in conflict with the Constitution must be removed from the legal system (*inter alia*, the rulings of 29 November 2001, 22 September 2015, and 4 July 2017).

The powers of the Constitutional Court to declare the unconstitutionality of provisions that are not impugned by the petitioner but regulate the same relationships and amend the legal regulation impugned by the petitioner

The Constitutional Court's ruling of 25 November 2019

... if the Constitutional Court finds the unconstitutionality of provisions that are not impugned by the petitioner but regulate the same relationships and amend the legal regulation impugned by the petitioner, it must state that the said provisions that are not impugned by the petitioner have been found to be unconstitutional. The Constitutional Court has held on more than one occasion that the implementation of constitutional justice implies that a legal act (part thereof) that is in conflict with the Constitution must be removed from the legal system (*inter alia*, the rulings of 29 November 2001, 22 September 2015, and 8 November 2019).

The powers of the Constitutional Court to declare the unconstitutionality of the provisions of a substatory legal act whose review falls within the competence of the Constitutional Court in cases where the provisions of the said substatory legal act implement the law impugned by the petitioner

The Constitutional Court's ruling of 18 February 2020

... if the Constitutional Court finds the unconstitutionality of the provisions of a substatory legal act whose review falls within the competence of the Constitutional Court in cases where the said substatory legal act implements the provisions of the law impugned in the constitutional justice case at issue, it must state that the provisions of the said substatory legal act have been found to be unconstitutional; this obligation of the Constitutional Court stems from the Constitution and, in this way, the supremacy of the Constitution is ensured.

The Constitutional Court investigates the compliance of impugned legal acts with the Constitution as an integral and harmonious system

The Constitutional Court's ruling of 3 June 2020

The Constitutional Court has held on more than one occasion that, in cases where, following a received petition, it investigates whether an impugned legal act (part thereof) is in conflict with the articles (paragraphs thereof) of the Constitution indicated in the petition, it at the same time investigates whether the impugned legal act (part thereof) is in conflict with the Constitution as a single coherent system; the Constitutional Court, having found that an impugned legal act (part thereof) is in conflict with the articles (paragraphs thereof) of the Constitution that are not indicated by the petitioner, has the powers to state this fact (*inter alia*, the rulings of 24 December 2002, 10 October 2013, and 19 September 2019). This also *mutatis mutandis* applies to cases where the Constitutional Court finds that an impugned legal act (part thereof) is in conflict with the constitutional principles not specified by the petitioner.

The powers of the Constitutional Court to declare the unconstitutionality of a legal act that is not impugned by the petitioner but for the adoption of which the preconditions were created by the legal act impugned by the petitioner

The Constitutional Court's ruling of 12 June 2020

As the Constitutional Court has held on more than one occasion, it exercises constitutional judicial review; the Constitutional Court is the institution of constitutional justice; while deciding, within its competence, on the compliance of lower-ranking legal acts (parts thereof) with higher-ranking legal acts, *inter alia* (and, first of all), with the Constitution, and exercising its other constitutional powers, the Constitutional Court – an autonomous and independent court – administers constitutional justice and guarantees constitutional lawfulness and the supremacy of the Constitution in the legal system.

It should be noted that the powers of the Constitutional Court to administer constitutional justice and to ensure constitutional lawfulness are inseparable from the imperatives of the constitutional principle of a state under the rule of law (rulings of 19 June 2018 and 16 April 2019). ... it should also be noted that such constitutional powers of the Constitutional Court are inseparable from the requirement, arising from the constitutional principle of a state under the rule of law, to respect the general legal principle of *ex injuria jus non oritur* (illegal acts cannot create law).

In this context, it should be noted that, having found the unconstitutionality of a legal act that is not impugned by the petitioner but for the adoption of which the preconditions were created by the legal act impugned by the petitioner, the Constitutional Court must state that the said legal act that is not impugned by the petitioner has been found to be unconstitutional. It should also be noted that, if the Constitutional Court did not state the unconstitutionality of a legal act that is not impugned by the petitioner but is related to the impugned legal act, this would not be in line with the constitutional mission of the Constitutional Court to administer constitutional justice and to guarantee constitutional lawfulness and the supremacy of the Constitution in the legal system.

... the implementation of constitutional justice implies that a legal act (part thereof) that is in conflict with the Constitution must be removed from the legal system. Therefore, under the Constitution, the Constitutional Court must remove from the legal system all anti-constitutional provisions whose unconstitutionality becomes apparent in the respective constitutional justice case under consideration.

The Constitutional Court has the powers to hold that a legal act impugned by the petitioner is in conflict with a higher-ranking legal act that is not indicated by the petitioner and is other than the Constitution

The Constitutional Court's ruling of 30 July 2020

The Constitutional Court has held that, having found that an impugned legal act (part thereof) is in conflict with the articles (paragraphs thereof) of the Constitution that are not indicated by the petitioner, the Constitutional Court has the powers to state this fact (*inter alia*, the rulings of 13 June 2000, 24 December 2002, and 30 December 2015). It should be noted that this provision is also *mutatis mutandis* applicable in cases where the Constitutional Court finds that an impugned legal act (part thereof) is in conflict with a higher-ranking legal act that is not indicated by the petitioner and is other than the Constitution, *inter alia*, that an impugned law is in conflict with a constitutional law.

Laws amending the Constitution (amendments to the Constitution) are subject to constitutional review by the Constitutional Court

The Constitutional Court's ruling of 30 July 2020

... laws amending the Constitution (amendments to the Constitution), although they have the force of the Constitution, are subject to constitutional review.

... under the Constitution, the Constitutional Court has the exclusive competence to investigate and decide whether, *inter alia*, any act adopted by the Seimas, as well as any act (part thereof) adopted by referendum, is in conflict, *inter alia* (and, first of all), with the Constitution (*inter alia*, the rulings of 28 March 2006, 24 October 2007, and 13 May 2010). Thus, under the Constitution, the Constitutional Court has the exclusive competence to decide whether laws amending the Constitution (amendments to the Constitution) are in line with the substantive and procedural limitations on the alteration of the Constitution, which arise from the Constitution. A different interpretation of the Constitution would render meaningless the substantive and procedural limitations on the alteration of the Constitution, which arise from the Constitution; it would, therefore, create no preconditions for defending the universal values on which the Constitution, as supreme law and as a social contract, and the state, as the common good of all society, are based; it would create no preconditions for protecting these values and the harmony of the provisions of the Constitution and, at the same time, would create no preconditions for ensuring the supremacy of the Constitution.

8.3.2. The powers of the Constitutional Court to present conclusions

The powers of the Seimas and of the Constitutional Court in impeachment proceedings (Item 4 of Paragraph 3 of Article 105 and Paragraph 3 of Article 107 of the Constitution)

See 4. The state and its institutions, 4.4. The responsibility of the authorities to society. The constitutional responsibility of the highest-ranking state officials, the conclusion of 31 March 2004.

The competence of the Constitutional Court to present a conclusion on violations of election laws (Paragraph 2 of Article 102 and Item 1 of Paragraph 3 of Article 105 of the Constitution)

The Constitutional Court's conclusion of 5 November 2004

Item 1 of Paragraph 3 of Article 105 of the Constitution prescribes that the Constitutional Court presents a conclusion on whether there were the violations of election laws during the elections of the President of the Republic or the elections of the members of the Seimas.

Paragraph 2 of Article 102 of the Constitution states that the status of the Constitutional Court and the procedure for the execution of its powers are established by the Law on the Constitutional Court of the Republic of Lithuania.

Under ... the Law on the Constitutional Court, while investigating an inquiry on the violation of election laws during an election of the President of the Republic or the members of the Seimas, the Constitutional Court examines and assesses only the decisions adopted by the Central Electoral Commission or its refusals to examine complaints concerning the violation of election laws in cases where such decisions are adopted or other acts are carried out by the said commission after voting closes in the election of the members of the Seimas or the President of the Republic.

The conclusion of the Constitutional Court that there was a gross violation of the election law during an election of the Seimas (Item 6 of Article 63 and Item 1 of Paragraph 3 of Article 105 of the Constitution)

See 5. The Seimas, 5.3. The constitutional status of a member of the Seimas, the conclusion of 10 November 2012 (“The termination of the powers of a member of the Seimas where the election is declared invalid or the law on election is grossly violated (Item 6 of Article 63 of the Constitution)”).

A conclusion presented by the Constitutional Court whether there was a violation of the election law during an election of the Seimas (Item 1 of Paragraph 3 of Article 105 of the Constitution)

The Constitutional Court’s ruling of 27 May 2014

Paragraph 3 of Article 107 of the Constitution stipulates that, on the basis of the conclusions of the Constitutional Court, the Seimas takes a final decision on the issues specified in Paragraph 3 of Article 105 of the Constitution. Under Item 1 of Paragraph 3 of Article 105 of the Constitution, the Constitutional Court presents a conclusion on whether there were the violations of the election law during the elections of the members of the Seimas. As held by the Constitutional Court in its decision of 29 November 2012, the Seimas, after receiving the conclusion of the Constitutional Court that the election law was violated during the election of the members of the Seimas, is obliged to adopt a final decision.

[...]

Paragraph 5 of Article 106 of the Constitution provides that the Seimas and the President may request from the Constitutional Court conclusions on whether the election law was violated, *inter alia*, during the elections of the members of the Seimas (Item 1 of Paragraph 3 of Article 105 of the Constitution). It should be noted that a doubt as to whether the election law was observed, *inter alia*, where the Central Electoral Commission was implementing its powers consolidated in the Constitution and laws in relation to the establishment of the final results of the elections to the Seimas, may constitute grounds for requesting the aforesaid conclusion from the Constitutional Court; under Item 1 of Paragraph 3 of Article 105 of the Constitution, the Constitutional Court must verify whether such a doubt is justified.

It should be emphasised that, once the Constitutional Court presents the conclusion that the election law was not violated during the election of the members of the Seimas, there are no grounds to doubt the results established by the Central Electoral Commission for the election to the Seimas and no grounds for the Seimas to take a final decision provided for in Paragraph 3 of Article 107 of the Constitution. Thus, under Paragraph 3 of Article 107 of the Constitution, the Seimas has the powers to take a final decision on the results of an election to the Seimas only in cases where, subsequent to an inquiry of the Seimas or the President, the Constitutional Court gives the conclusion that the election law was violated during the election of the members of the Seimas.

It should be noted that, under Paragraph 3 of Article 107 of the Constitution, the Seimas takes a final decision on the results of elections to the Seimas only on the basis of the conclusions of the Constitutional Court. It should also be noted that, under Item 1 of Paragraph 3 of Article 105 of the Constitution, it is only the institution of judicial power – the Constitutional Court – that may establish whether the election law was violated during elections to the Seimas; the establishment of violations of the election law is an object of judicial rather than political assessment.

Thus, the provision of Paragraph 3 of Article 107 of the Constitution, under which, based on the conclusions of the Constitutional Court, the Seimas conclusively decides on the issues specified in Paragraph 3 of Article 105 of the Constitution, must not be interpreted in such a manner that the Seimas is allowed to decide anew the same issue regarding which the Constitutional Court has given its conclusion; under the Constitution, the Seimas has no powers to decide on whether the conclusions of the Constitutional Court on violations of the election law are well founded and lawful. This, *inter alia*, means that the Seimas, which, by its nature and essence, is a political institution whose decisions reflect the political will of the majority of the members of the Seimas and are based on political arrangements and compromises, is not allowed to decide the issue of law as to whether the election law was violated, *inter alia*, is not allowed to disregard the conclusion of the Constitutional Court that the election law was violated during the elections of the Seimas.

8.3.3. The powers of the Constitutional Court to officially interpret the Constitution; the continuity of the jurisprudence of the Constitutional Court; and the development and reinterpretation (modification) of the official constitutional doctrine

The continuity of the jurisprudence of the Constitutional Court

The Constitutional Court's ruling of 13 December 2004

One of the numerous aspects of the constitutional principle of state under the rule of law ... is that similar cases must be decided in a similar manner. Therefore, the discretion of jurisdictional institutions, when resolving disputes and applying law, is limited. In its rulings of 21 July 2001 and 30 May 2003, as well as in its decision of 13 February 2004, the Constitutional Court held that the principle of a state under the rule of law, which is enshrined in the Constitution, implies, *inter alia*, the continuity of jurisprudence. The Constitutional Court, while deciding analogous constitutional disputes, follows the doctrine that was formed in its previous cases and reveals the content of the Constitution.

The interpretation of the Constitution in the jurisprudence of the Constitutional Court; the continuity of the jurisprudence of the Constitutional Court

The Constitutional Court's ruling of 14 March 2006

The principle of a state under the rule of law, which is enshrined in the Constitution, implies the continuity of the jurisprudence (rulings of 12 July 2001 and 30 May 2003, the decision of 13 February 2004, and the ruling of 13 December 2004). This can also be said as regards the jurisprudence of the Constitutional Court in which the official constitutional doctrine is formulated, the constitutional principles and norms are interpreted, and interrelations among various constitutional provisions, the relation of their content, the balance of constitutional values, and the essence of the constitutional legal regulation as a single whole are revealed. In the course of investigating the compliance of legal acts with higher-ranking legal acts, the Constitutional Court develops the concept of the provisions of the Constitution as presented in its previous acts and reveals new aspects of a particular legal regulation established in the Constitution, where such aspects are necessary for the consideration of a concrete constitutional justice case (rulings of 30 May 2003, 1 July 2004, and 13 December 2004).

Reinterpreting (modifying) the official constitutional doctrine upon amendments to the Constitution

The Constitutional Court's ruling of 14 March 2006

The continuity of the constitutional jurisprudence does not mean that the constitutional doctrine may not be modified or that its provisions may not be reinterpreted.

... it is (or may be) necessary to reinterpret official provisions of the constitutional doctrine (to modify the official constitutional doctrine), *inter alia*, in cases where amendments are made to certain articles (parts thereof) of the Constitution. On the entry into force of a constitutional amendment that alters (or repeals) a certain provision of the Constitution on the basis of which (i.e. in the course of the

interpretation of which) the previous constitutional doctrine was formulated (on the respective issue of the constitutional legal regulation), the Constitutional Court, under the Constitution, has the exceptional powers to state whether, while interpreting the Constitution, it is still possible (and to what extent) to invoke the official constitutional doctrine formulated by the Constitutional Court on the basis of the previous provisions of the Constitution, or whether it is no longer possible to invoke it (and to what extent) (rulings of 13 May 2004, 16 January 2006, and 24 January 2006).

In its acts, the Constitutional Court has held more than once that the provisions of the Constitution, which is an integral act (Paragraph 1 of Article 6 of the Constitution), are interrelated and constitute a harmonious system, that there is a balance among the values consolidated in the Constitution, and that it is not permitted to interpret any provision of the Constitution in such a way that the content of any other provision of the Constitution would be distorted or denied, since the essence of the entire constitutional legal regulation and the balance of values consolidated in the Constitution would, thus, be disturbed. Taking account of this, it should be held that the reinterpretation of official constitutional doctrinal statements (modification of the official constitutional doctrine) may also be necessary when such an amendment to the Constitution is made (certain provision of the Constitution is amended or repealed or a new provision is laid down in the Constitution) whereby the content of the entire constitutional legal regulation is modified in substance, even though the provision of the Constitution on the basis of which (i.e. while interpreting it) the previous official constitutional doctrine on a certain issue of the constitutional legal regulation was formulated is not formally changed. In such cases, it is solely the Constitutional Court that has the exceptional powers to state whether, while interpreting the Constitution, it is still possible (and to what extent) to invoke the previous official constitutional doctrine (as a whole and on every individual issue of the constitutional legal regulation) or whether it is no longer possible to invoke it (and to what extent).

[...]

On the other hand, the continuity of the constitutional jurisprudence and of the constitutional doctrine formulated therein, as well as the exceptional constitutional powers of the Constitutional Court to hold whether, in the course of interpreting the Constitution, it is still possible to invoke (and to what extent) the previous official constitutional doctrine or whether it is no longer possible to invoke it (and to what extent), implies that, each time when it is necessary to reinterpret certain official constitutional doctrinal provisions (to modify the official constitutional doctrine), the Constitutional Court must explicitly point it out and must properly (clearly and rationally) argue this in its respective act.

The powers of the Constitutional Court to officially interpret the Constitution; the force of the official constitutional doctrine

The Constitutional Court's ruling of 28 March 2006

Under the Constitution, only the Constitutional Court has the powers to interpret the Constitution officially (rulings of 30 May 2003, 29 October 2003, 13 May 2004, 1 July 2004, and 13 December 2004 and the decision of 20 September 2005). It is the Constitutional Court that formulates the official constitutional doctrine: the provisions of the Constitution – its norms and principles – are interpreted in the acts of the Constitutional Court. The official constitutional doctrine, *inter alia*, reveals the content of various constitutional provisions, their interrelations, the balance between constitutional values, and the essence of the constitutional legal regulation as a single whole (rulings of 1 July 2004, 13 December 2004, and 14 March 2006). The official constitutional doctrine may also *expressis verbis* specify what interpretation of the Constitution is not permissible.

Every ruling of the Constitutional Court is integral (it constitutes a single whole) and all its constituent parts are interrelated (decision of 12 January 2000, the ruling of 30 May 2003, the decisions of 11 February 2004 and 13 February 2004, the ruling of 19 January 2005, and the decisions of 10 February 2005 and 20 September 2005). The operative part of a ruling of the Constitutional Court is based on the arguments of the reasoning part (decisions of 12 January 2004, 11 February 2004, 13 February 2004, 10 February 2005, and 20 September 2005). When passing new laws and amending or supplementing laws or other legal acts that have already been passed, the state institutions that pass such

acts are bound both by the concept of the provisions of the Constitution and by other legal arguments that are presented in the reasoning of the respective ruling of the Constitutional Court (rulings of 30 May 2003 and 19 January 2005 and the decision of 20 September 2005). It also needs to be noted that law-making institutions (officials) and law-applying institutions (officials) are bound by the concept of constitutional provisions and by arguments set out not only in the rulings of the Constitutional Court, but also in other acts of the Constitutional Court, i.e. its conclusions and decisions; thus, under the Constitution, the content of all acts of the Constitutional Court in which the Constitution is interpreted, i.e. the official constitutional doctrine is formed, is also binding on law-making institutions (officials) and law-applying institutions (officials), including courts of general jurisdiction and specialised courts (decision of 20 September 2005).

Law-making subjects elucidate (often also interpret) higher law, thus, also the Constitution; law-applying subjects, *inter alia*, those that apply the Constitution, cannot avoid the elucidation (often also the interpretation) of higher law. The application of the Constitution is inseparable from the elucidation and, often, interpretation of its provisions. It is elucidation and interpretation of the provisions of the Constitution that are the necessary precondition for instituting the verification of the compliance of certain legal acts (parts thereof) with the Constitution at the Constitutional Court or another court to whose jurisdiction this is assigned. In this context, it should be emphasised that, as the Constitutional Court held in its decision of 20 September 2005, all law-making subjects and all law-applying subjects, including courts, must pay regard to the official constitutional doctrine when they apply the Constitution; they may not interpret the provisions of the Constitution differently from how the Constitutional Court has interpreted the said provisions in its acts. Otherwise, the constitutional principle that only the Constitutional Court has the powers to officially interpret the Constitution would be violated, the supremacy of the Constitution would be disregarded, and the preconditions would be created for the emergence of incompatibilities in the legal system.

It should be noted that courts, which, under the Constitution and laws, have the powers to investigate, in terms of compliance with the Constitution (other higher-ranking legal acts), such legal acts (parts thereof) whose investigation in terms of their compliance with the Constitution (other higher-ranking legal acts) does not fall within the jurisdiction of the Constitutional Court and to adopt the respective decisions, must not avoid the interpretation of the Constitution in cases where they investigate the compliance of the said legal acts (parts thereof) with the Constitution. ... under ... laws, administrative courts, i.e. specialised courts, which are established under Paragraph 2 of Article 111 of the Constitution, decide on the compliance of legal acts (parts thereof) passed by other law-making subjects (thus, not those passed by the Seimas, the President of the Republic, or the Government and not those adopted by referendum), *inter alia*, on the compliance of legal acts passed by ministers, other lower-ranking substatutory legal acts, as well as legal acts passed by municipalities, with higher-ranking legal acts, *inter alia* (and, first of all), with the Constitution. In its decision of 20 September 2005, the Constitutional Court held that, while implementing their respective powers, administrative courts are bound by the official constitutional doctrine formulated in acts (rulings, conclusions, and decisions) adopted by the Constitutional Court.

The development and reinterpretation (modification) of the official constitutional doctrine

The Constitutional Court's ruling of 28 March 2006

When investigating the compliance of laws and other legal acts with the Constitution, the Constitutional Court develops the concept of the provisions of the Constitution as presented in its previous rulings and other acts and reveals new aspects of a particular legal regulation established in the Constitution, where such aspects are necessary for the consideration of a concrete constitutional justice case (rulings of 30 May 2003, 1 July 2004, 13 December 2004, and 14 March 2006).

The development of the constitutional jurisprudence and the official doctrine formulated therein (particularly at the beginning of the activity of the Constitutional Court, when no official constitutional doctrine was yet formulated on most constitutional provisions) is characterised by the fact that the official

constitutional doctrine is not formulated all “at once” on any issue of the constitutional legal regulation (or on any issue of the interpretation of the respective provisions of the Constitution), but “case by case”, by supplementing the elements (fragments) of the said doctrine that were disclosed in the acts of the Constitutional Court adopted in previous constitutional justice cases with other elements revealed in the acts of the Constitutional Court adopted in new constitutional justice cases.

Thus, it should be emphasised that the formulation of the official constitutional doctrine (both as a whole and on every individual issue of the constitutional legal regulation) is not a one-off act, but a gradual and coherent process. This process is uninterrupted and is never fully completed, since the nature of the Constitution itself as the highest-ranking act and the idea of constitutionalism imply that the Constitution cannot and does not contain any gaps or internal contradictions (rulings of 25 May 2004 and 13 December 2004); while interpreting the norms and principles of the Constitution, which are consolidated explicitly or implicitly in the text of the Constitution and constitute a harmonious system, there is always the possibility, if this is necessary due to the logic of a constitutional justice case under consideration, that the Constitutional Court will formulate such provisions of the official constitutional doctrine, i.e. reveal such aspects of the constitutional legal regulation, that have not been formulated yet in the acts of the Constitutional Court adopted in previous constitutional justice cases. Whenever the Constitutional Court considers new constitutional justice cases subsequent to petitions, the official constitutional doctrine formulated in the previous acts of the Constitutional Court (on each individual issue of the constitutional legal regulation that is important for a particular case) is every time supplemented with new fragments. Thus, by formulating new official constitutional doctrinal provisions, the diversity and completeness of the legal regulation laid down in the Constitution – the supreme legal act – is revealed.

In this ruling of the Constitutional Court, it has been held that the official constitutional doctrine (both as a whole and on every individual issue of the constitutional legal regulation) is formulated gradually and coherently, by supplementing the elements (fragments) of the said doctrine revealed in previous acts adopted by the Constitutional Court with other elements revealed in new acts of the Constitutional Court.

Therefore, in general, it is not impossible that at a given time in the jurisprudence of the Constitutional Court (in particular, at the beginning of the activity of the Constitutional Court), there would also be such official constitutional doctrinal provisions (fragments or rudiments of the doctrine) that, if compared with each other but assessed separately from the entire official constitutional doctrinal context (in particular, where a more detailed and broader official constitutional doctrine is not formed on a particular issue of the constitutional legal regulation) and/or general principles of law, can be regarded as competing ones. If the text of the Constitution does not change, if it remains stable (i.e. if no respective amendments to the Constitution are made), the said real or alleged competition of these official constitutional doctrinal provisions is removed by further (*inter alia*, systemic) interpretation and development (in new constitutional justice cases) of the concept of the provisions of the Constitution and the official constitutional doctrinal provisions already formulated on the basis of the provisions of the Constitution.

The concept of the provisions of the Constitution and further interpretation and development of the official constitutional doctrinal provisions formulated on the basis of the said provisions of the Constitution in the acts of the Constitutional Court adopted in new constitutional justice cases may, under certain circumstances, imply not only disclosing new aspects of the constitutional legal regulation where such aspects are necessary for the investigation of the said constitutional justice cases and supplementing the concept of the provisions of the Constitution with new elements (fragments) where such concept was presented in the acts of the Constitutional Court adopted in previous constitutional justice cases, but also reinterpreting the previously formulated official constitutional doctrinal provisions when the official constitutional doctrine is modified.

It should be noted that the constitutional principle that only the Constitutional Court has the powers to interpret the Constitution officially and the related requirement that, while applying the Constitution, all law-making subjects and law-applying subjects (including courts) must pay regard to the official constitutional doctrine and must not interpret the provisions of the Constitution differently from how the Constitutional Court interpreted the said provisions in its acts imply that the said reinterpretation of the

concept of the provisions of the Constitution and official constitutional doctrinal provisions when the official constitutional doctrine is modified is the exclusive competence of the Constitutional Court.

The continuity of the jurisprudence of the Constitutional Court

The Constitutional Court's ruling of 28 March 2006

It should be emphasised that where no such amendments to the Constitution are made due to which it is necessary to reinterpret certain official constitutional doctrinal provisions so that the official constitutional doctrine would be modified, it is allowed to reinterpret official doctrinal provisions only if the necessity arises from the Constitution to diverge from the existing precedent and to create a new one. In this field, the Constitutional Court is not completely free – it is bound both by the precedents that it itself has created and by the official constitutional doctrine that it itself has formulated and that substantiates such precedents.

... the principle of a state under the rule of law, which is enshrined in the Constitution, implies the continuity of jurisprudence ... the creation of new court precedents, and arguing (reasoning) the court precedents must not be volitional acts that are rationally and legally unreasoned. Since courts of general jurisdiction, *inter alia*, the Supreme Court of Lithuania and the Court of Appeal of Lithuania, must, within their competence, ensure the continuity of the respective jurisprudence (*inter alia*, ensure that the practice of courts of general jurisdiction would be modified (that such practice would be deviated from precedents that were binding on courts by then and new precedents would be created) only when this is unavoidably and objectively necessary, as well as constitutionally justifiable and reasoned, and that such modification of the practice of courts of general jurisdiction (deviation from previous precedents that were binding on courts by then and the creation of new precedents) would in all cases be properly (clearly and rationally) argued (first of all, in the decisions of courts of general jurisdiction themselves)), and since the courts of the highest instances of the systems of specialised courts established under Paragraph 2 of Article 111 of the Constitution (in the system of administrative courts – the Supreme Administrative Court) are under the same obligation, therefore, the Constitutional Court, while invoking the constitutional doctrine that it itself has formed and precedents that it itself has created, must in the same way ensure the continuity of the constitutional jurisprudence (its coherence and consistency) and the predictability of its decisions.

Thus, deviating from the precedents created by the Constitutional Court when adopting decisions in constitutional justice cases is allowed and new precedents may be created only in cases where this is unavoidably and objectively necessary and is constitutionally justifiable and reasoned. Also, the official constitutional doctrinal provisions on which the precedents of the Constitutional Court are based must not be reinterpreted in a manner that the official constitutional doctrine may be modified when this is not unavoidably and objectively necessary, as well as constitutionally justifiable and reasoned. Any change of the precedents of the Constitutional Court or modification of the official constitutional doctrine may not be determined by accidental (from the aspect of law) factors. For instance, the modification of the official constitutional doctrine may not be determined solely by a change in the composition of the Constitutional Court.

It should be emphasised that the said necessity to reinterpret certain official constitutional doctrinal provisions so that the official constitutional doctrine would be modified may be determined only by such circumstances as the necessity to increase the possibilities of implementing the innate and acquired rights of persons and their legitimate interests, the necessity to better defend and protect the values enshrined in the Constitution, the need to create better conditions in order to reach the aims of the Lithuanian Nation that are declared in the Constitution and on which the Constitution itself is based, as well as the necessity to expand the possibilities of constitutional control in this country in order to guarantee constitutional justice and to ensure that no legal act (part thereof) that is in conflict with higher-ranking legal acts would have the immunity from being removed from the legal system.

It also needs to be emphasised that it is impossible and constitutionally impermissible to reinterpret the official constitutional doctrine so that the official constitutional doctrine would be modified in such a manner that the system of values consolidated in the Constitution is changed, their compatibility is denied,

the guarantees for the protection of the supremacy of the Constitution in the legal system are reduced, the concept of the Constitution as a single act and harmonious system is denied, the constitutional guarantees of the rights and freedoms of persons are reduced, and the model of the separation of powers, which is enshrined in the Constitution, is changed.

It should be particularly emphasised that every case of such reinterpretation of the official constitutional doctrine when the official constitutional doctrine is modified must be argued properly (clearly and rationally) in the respective act of the Constitutional Court.

The development and reinterpretation (modification) of the official constitutional doctrine allows ensuring the viability of the Constitution

The Constitutional Court's ruling of 28 March 2006

... the further interpretation and development of the official constitutional doctrine, *inter alia*, the reinterpretation of the official constitutional doctrinal provisions, also such reinterpretation where the official constitutional doctrine is modified, makes it possible, in the acts of the Constitutional Court adopted in new constitutional justice cases, to reveal the deep potential of the Constitution without changing its text and, in this respect, to adjust the Constitution to the changes of social life and to the constantly changing living conditions of society and the state, as well as to ensure the viability of the Constitution as the legal foundation of the life of society and the state. The formation and development of the official constitutional doctrine is a function of constitutional justice. The acts of the Constitutional Court adopted in new constitutional justice cases where such acts further interpret and develop, *inter alia*, reinterpret, the official constitutional doctrinal provisions, also where reinterpretation is made in a manner modifying the official constitutional doctrine, make it possible not to make any intervention into the text of the Constitution when such intervention is not legally necessary. In this way, the said acts adopted by the Constitutional Court contribute to ensuring the stability of the text of the Constitution and the constitutional order.

The reinterpretation of the official constitutional doctrinal provisions, also such reinterpretation where the constitutional doctrine is modified, means, *inter alia*, that, in the future, at the Constitutional Court, constitutional justice cases will have to be considered and decisions will have to be adopted by following this reinterpreted (modified) official constitutional doctrine.

The development of the official constitutional doctrine does not constitute grounds for reviewing the final acts of the Constitutional Court adopted in previous cases

The Constitutional Court's ruling of 28 March 2006

... under the Constitution, no development of the official constitutional doctrine – neither the supplementing of the conception of the provisions of the Constitution provided in the acts of the Constitutional Court adopted in previous constitutional justice cases with new elements (fragments) nor the reinterpretation of the previously formulated official constitutional doctrinal provisions where the official constitutional doctrine is modified – may constitute or constitutes grounds for reviewing the previously adopted rulings, conclusions, or decisions (or their reasoning) by which constitutional justice cases were completed.

The same can also be said about such cases where the Constitutional Court, after it receives a petition of a court of general jurisdiction or a specialised court (established under Paragraph 2 of Article 111 of the Constitution) requesting an investigation into and a decision on whether a certain act (part thereof) passed by the Seimas, the President of the Republic, or the Government or that adopted by referendum is in conflict with a higher-ranking legal act, *inter alia* (and, first of all), with the Constitution, does not decide, under the Constitution and the Law on the Constitutional Court, on the merits of a question by means of a properly (clearly and rationally) argued decision, i.e. the Constitutional Court refuses to consider the petition, or dismisses the instituted legal proceedings (case) where, after the respective petition was received at the Constitutional Court, the preparation of a constitutional justice case for a hearing at the Constitutional Court has begun or it has already been considered in a hearing at the Constitutional Court.

[...]

... neither any development of the official constitutional doctrine nor the application of new methods of the interpretation of law while interpreting certain provisions of the Constitution constitutes or may constitute grounds for the Constitutional Court to review its final legal acts – rulings, conclusions, and decisions, *inter alia*, such by means of which the Constitutional Court refuses to consider a petition of the petitioner – a court – requesting an investigation into and a decision on whether a legal act (part thereof) passed by the Seimas, the President of the Republic, or the Government or that adopted by referendum is in conflict with a higher-ranking legal act, *inter alia* (and, first of all), with the Constitution, or by which the instituted legal proceedings (case) are (is) dismissed where, after the respective petition was received at the Constitutional Court, the preparation of a constitutional justice case for a hearing at the Constitutional Court has begun or it has already been considered in a hearing at the Constitutional Court.

... Paragraph 1 of Article 107 of the Constitution means that every legal act (part thereof) passed by the Seimas, the President of the Republic, or the Government or that adopted by referendum where such a legal act has been declared in conflict with any higher-ranking legal act, *inter alia* (and, first of all), with the Constitution, is removed from the Lithuanian legal system for good and may never be applied.

... [the] provisions [of Paragraphs 1 and 2 of Article 107] of the Constitution help to ensure the stability and certainty of the legal regulation of social relationships, the continuity of the jurisprudence of the Constitutional Court (and other courts), and the predictability of their activity and adopted decisions, while the subjects of constitutional legal relationships are protected from such a review of final legal acts adopted by the Constitutional Court that would be determined not by the objective constitutional necessity, but by accidental (from the legal point of view) factors.

The development of the official constitutional doctrine does not constitute grounds for addressing the Constitutional Court repeatedly with the same petition or inquiry

The Constitutional Court's ruling of 28 March 2006

... as such, no development of the official constitutional doctrine (*inter alia*, such reinterpretation of the official constitutional doctrinal provisions where the official constitutional doctrine is modified) constitutes grounds for the subjects specified in Article 106 of the Constitution to apply to the Constitutional Court with a new petition requesting an investigation into whether such a law (part thereof) is in conflict with the Constitution (another higher-ranking legal act) whose compliance with the Constitution (another higher-ranking legal act) has already been investigated on the merits, or with a petition that is analogous to a petition previously filed by a certain subject requesting an investigation into whether such a legal act (part thereof) is in conflict with the Constitution (another higher-ranking legal act) on which the Constitutional Court has already passed the decision to refuse to consider such a petition or passed the decision (ruling) to dismiss the instituted legal proceedings (case) (if, after the respective petition was received at the Constitutional Court, the preparation of the constitutional justice case for the hearing of the Constitutional Court began, or if the respective petition has already been considered at the hearing of the Constitutional Court), thus, where the Constitutional Court did not decide the respective question on the merits.

As such, the change (reinterpretation, modification) of the constitutional doctrine formed by the Constitutional Court previously does not constitute grounds for the subjects specified in Article 106 of the Constitution to apply to the Constitutional Court with a new inquiry whether there were the violations of election laws during the elections of the President of the Republic or the elections of the members of the Seimas, whether the state of health of the President of the Republic allows him/her to continue to hold office, whether the international treaties of the Republic of Lithuania are in conflict with the Constitution, and whether the concrete actions of the members of the Seimas and state officials against whom an impeachment case has been instituted are in conflict with the Constitution.

Interpreting the Constitution and other legal acts in the jurisprudence of the Constitutional Court

The Constitutional Court's decision of 8 May 2007

When investigating whether an impugned law (part thereof) is in conflict with the Constitution, the Constitutional Court officially interprets both the Constitution and the said law. In doing so, the Constitutional Court applies various methods of the interpretation of law: systemic, the one of general legal principles, logical, teleological, the one of the intentions of the legislature, the one of precedents, historical, comparative, etc.

As such, a judgment handed down by the European Court of Human Rights does not constitute constitutional grounds for reinterpreting (modifying) the official constitutional doctrine

The Constitutional Court's ruling of 5 September 2012

... as such, a judgment of the European Court of Human Rights may not serve as constitutional grounds for the reinterpretation (modification) of the official constitutional doctrine (provisions thereof) if such reinterpretation, in the absence of the respective amendments to the Constitution, changed the overall constitutional regulation (*inter alia*, the integrity of the constitutional institutions ...) in substance, also if it disturbed the system of the values consolidated in the Constitution and diminished the guarantees for the protection of the supremacy of the Constitution in the legal system.

The powers of the Constitutional Court to interpret the Constitution

The Constitutional Court's ruling of 5 September 2012

The powers of the Constitutional Court to officially interpret the Constitution and to provide, in its jurisprudence, the official concept of the provisions of the Constitution arise from the Constitution itself: in order to be able to establish and adopt a decision whether the legal acts (parts thereof) under investigation are in conflict with higher-ranking legal acts, the Constitutional Court has the constitutional powers to officially interpret both the legal acts under investigation and the said higher-ranking legal acts; a different interpretation of the powers of the Constitutional Court would deny the constitutional mission of the Constitutional Court itself (ruling of 6 June 2006 and the decision of 3 May 2010).

8.3.4. The limits of the jurisdiction of the Constitutional Court

8.3.4.1. The powers of the Constitutional Court to investigate the constitutionality of legal gaps

The powers of the Constitutional Court to investigate the constitutionality of legal gaps

The Constitutional Court's decision of 6 May 2003

If laws (parts thereof) fail to establish a certain legal regulation, the Constitutional Court has the constitutional powers to investigate the constitutionality of such laws (parts thereof) in cases where failure to lay down the said legal regulation in precisely the aforementioned laws (parts thereof) may lead to a violation of the principles and/or norms of the Constitution.

The Constitutional Court also has the constitutional powers to investigate the compliance of such substatory acts (parts thereof) passed by the Seimas, the Government, or the President of the Republic in which a certain legal regulation is not established with the Constitution and/or laws in cases where failure to lay down the said legal regulation in precisely the aforementioned substatory legal acts (parts thereof) may lead to a violation of the Constitution and/or laws.

In cases where a petitioner impugns the fact that a law or another legal act (part thereof) indicated by the petitioner does not establish a certain legal regulation, but the said legal regulation, under the Constitution (or also under laws, where a substatory legal act passed by the Seimas, the Government, or the President of the Republic is impugned), does not need to be established in the aforesaid impugned legal act (part thereof), the Constitutional Court holds that, in the case on the request of the petitioner, the matter for investigation is absent; this constitutes grounds for dismissing the case (ruling of 25 January 2001).

A legal gap (*lacuna legis*), *inter alia*, a legislative omission

See 1. The foundations of the constitutional order, 1.8. The foundations of lawmaking and of the application of law, 1.8.3. Legal gaps, the decision of 8 August 2006.

The powers of the Constitutional Court to declare a legal regulation that contains a legal omission to be in conflict with the Constitution (another higher-ranking legal act); the Constitutional Court does not have the powers to assess the inaction of law-making subjects (non-adoption of law-making decisions) (Paragraphs 1 and 2 of Article 105 and Paragraph 1 of Article 107 of the Constitution)

The Constitutional Court's decision of 8 August 2006

The “detection” of a legislative omission *par excellence* in a lower-ranking legal act (part thereof), if this is necessary because of the logic of the constitutional justice case under consideration, constitutes sufficient grounds for ruling the aforesaid legal act (part thereof) to be in conflict (to the respective extent, i.e. to the extent that the legal act (part thereof) does not consolidate the legal regulation required by higher-ranking legal acts, *inter alia* (and, first of all), by the Constitution) with the Constitution (another higher-ranking legal act).

[...]

In the acts adopted by the Constitutional Court (*inter alia*, the decision of 16 April 2004 and the rulings of 29 December 2004, 19 January 2005, 16 January 2006, and 28 March 2006), various aspects of a legislative omission, as a phenomenon of legal reality, have been revealed.

In its jurisprudence (*inter alia*, in the ruling of 25 January 2001, the decisions of 6 May 2003, 13 May 2003, and 16 April 2004, and the ruling of 13 December 2004), the Constitutional Court follows the provision that the Constitutional Court has the constitutional powers not only to hold that there is a legal gap, *inter alia*, a legislative omission, in a reviewed lower-ranking legal act (part thereof), but also, by its ruling adopted in the constitutional justice case, it can rule such a legal regulation to be in conflict with higher-ranking legal acts, *inter alia*, with the Constitution. However, in order that the Constitutional Court could accept for consideration a petition impugning a real or alleged legal gap, *inter alia*, a legislative omission, let alone that the Constitutional Court would be able, by its ruling, to rule the respective legal regulation to be in conflict with higher-ranking legal acts, *inter alia*, with the Constitution, it is necessary to follow certain conditions, which are defined in the jurisprudence of the Constitutional Court (*inter alia*, in the aforementioned rulings and decisions of the Constitutional Court), namely: if laws or other lower-ranking legal acts (parts thereof) do not establish a certain legal regulation, the Constitutional Court has the constitutional powers to rule such laws or other legal acts (parts thereof) to be in conflict with the Constitution or other higher-ranking legal acts in cases where failure to lay down the said legal regulation in precisely the reviewed laws or other legal acts (in precisely the reviewed parts thereof) may lead to a violation of the principles and/or norms of the Constitution or the provisions of other higher-ranking legal acts; however, in cases where the Constitutional Court reviews a law or another legal act (part thereof), impugned by a petitioner, that does not establish a certain legal regulation that, under the Constitution (and also under laws, if a substatutory act (part thereof) passed by the Seimas, or an act (part thereof) passed by the President of the Republic or the Government is impugned), does not need to be established in precisely the impugned legal act (in precisely that part thereof), the Constitutional Court holds that the matter for investigation is absent in the case on the request of the petitioner and this constitutes grounds for dismissing the instituted legal proceedings (if the respective petition was accepted at the Constitutional Court and the preparation of a constitutional justice case for the hearing of the Constitutional Court has begun) or for dismissing the case (if the constitutional justice case has already been considered at the hearing of the Constitutional Court).

Attention should be paid to the fact that, while deciding whether the Constitutional Court has, under the Constitution, the powers to rule a legal gap in a lower-ranking legal act (or other absence of explicit legal provisions in that legal act) to be in conflict with the Constitution or another higher-ranking legal act, it is impossible to focus solely on the doctrinal provision (statement) “If laws (parts thereof) fail to establish a certain legal regulation, the Constitutional Court has the constitutional powers to investigate the

constitutionality of such laws (parts thereof) in cases where failure to lay down the said legal regulation in precisely the aforementioned laws (parts thereof) may lead to a violation of the principles and/or norms of the Constitution” of the Constitutional Court’s decision of 6 May 2003. It is also necessary to take account of how the said legal gap occurred: whether it is a legislative omission created by means of a law-making action of the subject that passed the particular legal act (i.e. due to the fact that, in the course of passing this legal act, the legal relationships that must be regulated in precisely that legal act (in precisely that part thereof) were not regulated in precisely that legal act (in precisely that part thereof)), or whether this legal gap occurred due to other circumstances, for example, due to the fact that, by its ruling, the Constitutional Court recognised that the legal regulation in a certain lower-ranking legal act (part thereof) was in conflict with the Constitution or another higher-ranking legal act. In the latter case, as mentioned before, there are no grounds for stating the presence of a legislative omission; on the contrary, in such a situation, under the Constitution, the respective law-making subject (provided that the particular legal relationships must be legally regulated) is under the obligation to change the legal regulation that is no longer valid so that a newly established legal regulation would not be in conflict with a certain higher-ranking legal act, *inter alia* (and, first of all), with the Constitution.

A different concept of a legislative omission, as well as a different interpretation of the powers of the Constitutional Court to investigate the compliance of lower-ranking legal acts with higher-ranking legal acts, *inter alia* (and, first of all), with the Constitution, and to recognise, by its rulings, that the legal gaps present in those lower-ranking legal acts (parts thereof) are in conflict with higher-ranking legal acts, *inter alia*, with the Constitution, namely the interpretation that the Constitutional Court may or must also investigate such legal gaps that are not the consequence of an action of the law-making subject that passed a certain legal act, for example, such legal gaps where the regulation of certain legal relationships has never started in any legal acts, although there is a need for their legal regulation, as well as such legal gaps or other indeterminacies that could occur after the Constitutional Court recognises, by its ruling, that a certain legal act (part thereof) is in conflict with a higher-ranking legal act, *inter alia*, with the Constitution, would deny the essence of a legislative omission as the consequence of the action of the law-making subject that passed the respective legal act. In addition, the presumption that the Constitutional Court may or must investigate also such legal gaps or other indeterminacies that occur after the Constitutional Court itself recognises, by its ruling, that a certain legal act (part thereof) is in conflict with a higher-ranking legal act, *inter alia*, with the Constitution, would mean that the Constitutional Court, while acting within its constitutional competence, by the said ruling, creates such a legal situation (i.e. that it virtually creates a new legal regulation instead of that ruled in conflict with a higher-ranking legal act, *inter alia*, with the Constitution) that is incompatible with the Constitution or another higher-ranking legal act; such interpretation of the powers of the Constitutional Court to recognise, by its ruling, that legal gaps are in conflict with the Constitution would distort in substance and even deny the essence and meaning of constitutional review and constitutional justice.

The aforesaid presumption would also ignore the fact that, under Paragraphs 1 and 2 of Article 105 of the Constitution, the Constitutional Court investigates whether specifically legal acts as such adopted by state institutions (Seimas, the President of the Republic, or the Government) are in conflict with higher-ranking legal acts, *inter alia* (and, first of all), with the Constitution, but it does not investigate the non-adoption of law-making decisions by the said state institutions, i.e. the avoidance or delay of adopting such decisions, as well as the failure to act that is determined by other motives. It also needs to be emphasised that, as mentioned before, under Paragraph 1 of Article 107 of the Constitution, a law (part thereof) of the Republic of Lithuania or another act (part thereof) of the Seimas, an act of the President of the Republic, or an act (part thereof) of the Government may not be applied from the day of the official publication of the decision of the Constitutional Court that the act in question (part thereof) is in conflict with the Constitution; this means that every legal act (part thereof) passed by the Seimas, the President of the Republic, or the Government or that adopted by referendum where such a legal act has been declared in conflict with any higher-ranking legal act, *inter alia* (and, first of all), with the Constitution, is removed from the Lithuanian legal system for good and may never be applied. After all, if the constitutional powers

of the Constitutional Court were interpreted as also including the (alleged) powers to investigate and adopt a decision that the fact that state institutions do not adopt law-making decisions where no legal act is passed at all is in conflict with the Constitution or another higher-ranking legal act, it would become completely unclear how, in such cases, Paragraph 1 of Article 107 of the Constitution (which is a directly applicable act (Paragraph 1 of Article 6 of the Constitution)) must be applied, since, in such cases, there is no such a legal act (part thereof) that may be impugned at the Constitutional Court by the subjects specified in the Constitution. Thus, the said presumption would also deny and distort in substance the concept of the constitutional legal effects of acts adopted by the Constitutional Court.

... after the Constitutional Court recognises by its ruling that a lower-ranking legal act (part thereof) is in conflict with a higher-ranking legal act, *inter alia*, with the Constitution, the respective law-making subject is under the constitutional duty to declare such a legal act (part thereof) no longer valid or, if it is impossible to do without the concrete legal regulation of the social relationships in question, to change it so that a newly established legal regulation is not in conflict with higher-ranking legal acts, *inter alia* (and, first of all), with the Constitution. As long as this has not been done, the respective legal gap (which, as emphasised in this decision of the Constitutional Court, is not a legislative omission) remains. In order to remove it, a certain period of time may be necessary. However, despite the fact that this time might be quite lengthy, this does not in itself mean that the Constitutional Court is granted the powers to investigate the compliance of the same legal act with higher-ranking legal acts, *inter alia*, with the Constitution, where such same legal act has already been investigated from the same aspect by the Constitutional Court in a constitutional justice case that was considered previously and, upon the investigation of which and the entry into force of the respective ruling of the Constitutional Court, precisely the said legal gap occurred.

Thus, the Constitutional Court, which, under the Constitution, has the exclusive powers to investigate and adopt decisions regarding any consequences of law-making decisions (actions) of the Seimas, the President of the Republic, or the Government, i.e. regarding the compliance of legal acts (parts thereof) with higher-ranking legal acts, *inter alia* (and, first of all), with the Constitution, does not have any powers, under Paragraphs 1 and 2 of Article 105 and Paragraph 1 of Article 107 of the Constitution, to investigate the non-adoption of law-making decisions by state institutions the compliance of legal acts adopted by which with the Constitution is investigated by the Constitutional Court, i.e. it does not have any powers to investigate the avoidance and delay of adopting such decisions or such failure to act that is determined by other motives, even though gaps or other indeterminacies occur in the legal system due to such failure to act. Thus, the subjects that are pointed out in the Constitution and may impugn the compliance of precisely legal acts (parts thereof) adopted by the Seimas, the President of the Republic, or the Government or those adopted by referendum with higher-ranking legal acts, *inter alia*, with the Constitution, must not impugn the avoidance and delay of adopting such law-making decisions or such failure to act that is determined by other motives, where, due to such inaction, particular legal acts have not been passed, including those that must be passed in order to lay down, by taking account of the acts adopted by the Constitutional Court, such a legal regulation that would be in compliance with the Constitution or other higher-ranking legal acts.

If the respective law-making subject has not passed a legal act (acts) (parts thereof) whereby a new (different) legal regulation would be established instead of a legal act (parts thereof) ruled by the Constitutional Court to be in conflict with a higher-ranking legal act, *inter alia*, with the Constitution, also, if the said subject has not passed a legal act (acts) (parts thereof) whereby a legal act (part thereof) ruled by the Constitutional Court to be in conflict with a higher-ranking legal act, *inter alia*, with the Constitution, is declared no longer valid, then, as held in this decision of the Constitutional Court, there is no legal act that may be impugned at the Constitutional Court by the subjects specified in the Constitution; thus, in such a case, there is no such legal act (part thereof) over which the Constitutional Court might exercise constitutional control.

[...]

... the fact that the subjects specified in the Constitution may not challenge before the Constitutional Court such failure of a law-making subject to act where, instead of a legal regulation that has been ruled by the Constitutional Court to be in conflict with a higher-ranking legal act, *inter alia*, with the Constitution,

the said law-making subject has not passed a legal act (acts) (parts thereof) that would establish a new (different) legal regulation harmonised with the said higher-ranking legal acts, *inter alia*, with the Constitution, and where the Constitutional Court does not have the powers to investigate the non-adoption of such law-making decisions, does not mean that the aforementioned persons cannot defend (also in a court) their rights and freedoms that are violated because the said law-making decisions have not been adopted. The general legal principle of *ubi ius, ibi remedium*, the provision of Paragraph 1 of Article 6 of the Constitution, whereby the Constitution is a directly applicable act, the constitutional principle of responsible governance, the provision of Paragraph 3 of Article 5 of the Constitution, according to which state institutions serve the people, the provision of Article 18 of the Constitution, whereby human rights and freedoms are innate, as well as the constitutional right of a person who believes that his/her constitutional rights or freedoms are violated to apply to a court, imply not only that, in such cases, the rights, freedoms, legitimate interests, and legitimate expectations must and may be defended by means of interpreting the Constitution and by directly applying its provisions, but also that such protection must be guaranteed by courts.

The powers of the Constitutional Court to investigate the constitutionality of a legislative omission

The Constitutional Court's decision of 25 April 2012

... a petition that is based on a legislative omission presumed by the petitioner that filed it may be accepted and a case may be commenced following such a petition only if such arguments and reasoning are set out in the petition that substantiate the fact that, under the Constitution, the non-established legal regulation must be established in precisely that part of the legal act that is specified by the petitioner (decisions of 16 April 2004 and 16 November 2010).

8.3.4.2. The powers of the Constitutional Court to investigate the constitutionality of legal acts that are no longer in force

Dismissing legal proceedings where an impugned legal act is annulled

The Constitutional Court's ruling of 5 April 2000

Under [the Law on the Constitutional Court], the annulment of an impugned legal act constitutes grounds for adopting a decision on dismissing the instituted legal proceedings. The phrase "shall be grounds to adopt a decision to dismiss the instituted legal proceedings" must be interpreted as establishing the right of the Constitutional Court to dismiss the instituted legal proceedings while taking account of the circumstances of the case under investigation, but not as stipulating that the instituted legal proceedings must be dismissed in every case where the respective impugned legal act is annulled.

Dismissing legal proceedings where an impugned legal act is annulled; the duty of the Constitutional Court to consider a petition filed by a court regardless of whether an impugned act is in force (Paragraph 1 of Article 102 and Article 110 of the Constitution)

The Constitutional Court's ruling of 21 August 2002

Under the Constitution, only the Constitutional Court decides whether laws and other acts of the Seimas are in conflict with the Constitution and whether the acts of the President of the Republic and the Government are in conflict with the Constitution or laws (Paragraph 1 of Article 102). Paragraph 1 of Article 110 of the Constitution provides that judges may not apply any laws that are in conflict with the Constitution. Under Paragraph 2 of the same article, in cases where there are grounds to believe that a law or another legal act that should be applied in a concrete case is in conflict with the Constitution, the judge must suspend the consideration of the case and must apply to the Constitutional Court, requesting that it decide whether the law or another legal act in question is in compliance with the Constitution.

These constitutional provisions mean that, in cases where a court considering a case, after it has doubts over the compliance of a law applicable in the case with the Constitution or the compliance of another act adopted by the Seimas, the President of the Republic, or the Government with the Constitution or laws, applies to the Constitutional Court, the Constitutional Court has the duty to consider the petition of the said court regardless of whether or not the impugned law or another legal act is in force.

... the phrase “shall be grounds to adopt a decision to dismiss the instituted legal proceedings” used in ... the Law on the Constitutional Court must be interpreted as establishing the right for the Constitutional Court, while taking account of the circumstances of the case, to dismiss the instituted legal proceedings in cases where not courts, but other subjects specified in Article 106 of the Constitution have applied to the Constitutional Court; the aforementioned phrase must not be interpreted as stipulating that the instituted legal proceedings must be dismissed in every case where an impugned legal act is annulled.

The powers of the Constitutional Court to investigate the compliance of legal acts that are no longer in force with higher-ranking legal acts (Article 110 of the Constitution)

The Constitutional Court’s ruling of 28 March 2006

... if a petitioner – a court considering a case – applies to the Constitutional Court, requesting an investigation into and a decision on whether a legal act (part thereof) passed by the Seimas, the President of the Republic, or the Government or that adopted by referendum, where the said legal act is applicable in the case before that court, is in conflict with a higher-ranking legal act, *inter alia* (and, first of all), with the Constitution, and, if the Constitutional Court does not decide this question on the merits, the doubts of the said court about whether the respective law or another legal act (part thereof) is in conflict with a higher-ranking legal act, *inter alia* (and, first of all), with the Constitution, will not be removed and, if it applies such a law or another legal act (part thereof), the values, *inter alia*, the constitutional rights of a person, which are consolidated, defended, and protected by the Constitution, could be violated.

The same applies to such legal situations where an impugned law or another legal act (part thereof), which must be applied in a case before a court that has applied to the Constitutional Court with a petition, is no longer in force at the time when the respective constitutional justice case is under consideration (or at the time when its consideration is expected to take place) – it has been declared no longer valid (has been annulled or amended) or its validity has expired: if the Constitutional Court did not decide on the merits the question on the compliance of that law or another legal act (part thereof) with a higher-ranking legal act, *inter alia* (and, first of all), with the Constitution, the doubts faced by the court considering the said case about whether the aforesaid law or another legal act (part thereof) is in conformity with a higher-ranking legal act, *inter alia* (and, first of all), with the Constitution, would not be removed and, if the same law or another legal act (part thereof) that is no longer in force is applied in the course of adopting the respective court decision, the values, *inter alia*, the constitutional rights of a person, which are consolidated, defended, and protected by the Constitution, could be violated.

Thus, in every case where the Constitutional Court, after it receives the petition of a court of general jurisdiction or a specialised court (established under Paragraph 2 of Article 111 of the Constitution) requesting an investigation into and a decision on whether a legal act (part thereof) passed by the Seimas, the President of the Republic, or the Government or that adopted by referendum is in conflict with a higher-ranking legal act, *inter alia* (and, first of all), with the Constitution, refuses, under the Constitution and the Law on the Constitutional Court, to consider such a petition (thus, does not decide the respective question on the merits), a rationally argued decision must be adopted.

[...]

... in general, the Constitution does not prohibit the establishment of such a legal regulation in the Law on the Constitutional Court that, in cases where an impugned legal act (part thereof) is no longer in force – it has been declared no longer valid (has been annulled or amended) or its validity has expired, would allow the Constitutional Court, while taking account of all important circumstances, to refuse to investigate and decide, subsequent to the petition of petitioners (as mentioned before, petitioners are

specified in Article 106 of the Constitution), whether a legal act (part thereof) passed by the Seimas, the President of the Republic, or the Government or that adopted by referendum is in conflict with a higher-ranking legal act, *inter alia* (and, first of all), with the Constitution and, in cases where, after the respective petition was received at the Constitutional Court, the preparation of the constitutional justice case has begun or the case has already been investigated at the hearing of Constitutional Court, would allow the Constitutional Court to dismiss the instituted legal proceedings (case).

However, it should be emphasised that, under the Constitution (*inter alia*, under Paragraph 1 of Article 110 of the Constitution, according to which judges may not apply any laws that are in conflict with the Constitution, and under Paragraph 2 of this article, according to which, in cases where there are grounds to believe that a law or another legal act that should be applied in a concrete case is in conflict with the Constitution, the judge must suspend the consideration of the case and must apply to the Constitutional Court, requesting that it decide whether the law or another legal act in question is in compliance with the Constitution), it is not allowed to establish any such a legal regulation whereby, in cases where the Constitutional Court receives a petition from precisely a court (which ... differs from other subjects specified in Article 106 of the Constitution, *inter alia*, because a court, if it faces doubts regarding the compliance of a legal act (part thereof) passed by the Seimas, the President of the Republic, or the Government or that adopted by referendum, where the said legal act is applicable in the case, with a higher-ranking legal act, *inter alia* (and, first of all), with the Constitution, not only may, but also must apply to the Constitutional Court) requesting an investigation into and a decision on whether a legal act (part thereof) passed by the Seimas, the President of the Republic, or the Government or that adopted by referendum is in conflict with a higher-ranking legal act, *inter alia* (and, first of all), with the Constitution and, if the Constitutional Court did not to decide this question on the merits (if it refused to consider the petition) specifically because the impugned legal act (part thereof) is no longer in force – it has been declared no longer valid (has been annulled or amended) or its validity has expired, the preconditions would be created for the court considering the respective case to apply such a law or another legal act (part thereof) whose compliance with the Constitution (another higher-ranking legal act), in the opinion of the said court, is doubtful; if the court applied such a law or another legal act (part thereof), the values, *inter alia*, the constitutional rights of a person, which are consolidated, defended, and protected by the Constitution, could be violated. Thus, it should be held that, under the Constitution, a court considering a case, which, under the Constitution, not only may, but also (if it has certain doubts) must apply to the Constitutional Court with a petition requesting a decision on whether the respective legal act (part thereof) passed by the Seimas, the President of the Republic, or the Government or that adopted by referendum is in conflict with a higher-ranking legal act, *inter alia* (and, first of all), with the Constitution, also has the constitutionally justifiable interest to receive the respective answer from the Constitutional Court and that such an answer will be given; a different interpretation of the respective provisions of the Constitution could create the preconditions for a court considering a case to apply such a law or another legal act (part thereof) whose compliance with the Constitution (with another higher-ranking legal act), in the opinion of the said court, is doubtful. Thus, the Constitution prohibits the establishment of any such a legal regulation in the Law on the Constitutional Court (or in any other law) that would allow the Constitutional Court, in cases where an impugned legal act (part thereof) passed by the Seimas, the President of the Republic, or the Government or that adopted by referendum is no longer in force – it has been declared no longer valid (has been annulled or amended) or its validity has expired, but it must be applied in the case before the court, to refuse to investigate and decide, subsequent to the petition of the said court, whether such a legal act (part thereof) passed by the Seimas, the President of the Republic, or the Government or that adopted by referendum is in conflict with the Constitution (with another higher-ranking legal act) specifically because that legal act (part thereof) is no longer in force – it has been declared no longer valid (has been annulled or amended) or its validity has expired and, in cases where the respective petition is received at the Constitutional Court and the preparation of the constitutional justice case has begun, or the case has already been investigated at the hearing of the Constitutional Court, would allow the Constitutional Court to dismiss the instituted legal proceedings (case).

[...]

... the official constitutional doctrine eventually consolidated the provision that, in cases where courts apply to the Constitutional Court after they, in the course of the administration of justice, have doubts about the compliance of lower-ranking legal acts with higher-ranking legal acts, *inter alia* (and, first of all), with the Constitution ... the Constitutional Court does not have the powers to dismiss the instituted legal proceedings (case) and must consider such a case; whereas in cases where other subjects specified in Article 106 of the Constitution apply to the Constitutional Court, the Constitutional Court is allowed, while taking account of the circumstances of a constitutional justice case under consideration, to dismiss or not to dismiss the instituted legal proceedings (case).

Dismissing legal proceedings where an impugned legal act is annulled

The Constitutional Court's ruling of 22 December 2011

As held by the Constitutional Court more than once, the phrase “shall be grounds ... to dismiss the instituted legal proceedings” should be interpreted as establishing the right of the Constitutional Court, in cases where not courts, but other subjects specified in Article 106 of the Constitution have applied to the Constitutional Court, to dismiss the instituted legal proceedings while taking account of the circumstances of the case (*inter alia*, the rulings of 19 January 2005 and 28 March 2006 and the decisions of 31 May 2006, 29 December 2006, 28 May 2007, 25 February 2008, and 14 December 2009); gradually ... in its jurisprudence, the Constitutional Court also made the interpretation that, in cases where not courts, but other subjects specified in Article 106 of the Constitution have applied to the Constitutional Court and where an impugned legal act (part thereof) is no longer in force – it has been declared no longer valid (has been annulled or amended) or its validity has expired, the Constitutional Court, while taking account of the circumstances of the case under consideration, has the powers to dismiss the instituted legal proceedings; however, the Constitutional Court is not obliged to dismiss the instituted legal proceedings in every case where an impugned legal act (part thereof) is no longer in force – it has been declared no longer valid (has been annulled or amended) or its validity has expired (ruling of 28 March 2006 and the decision of 8 August 2006).

It needs to be noted that the jurisprudence of the Constitutional Court has equated to invalid legal acts (parts thereof) such impugned legal acts (parts thereof) that, although were formally valid when the respective constitutional justice cases were under investigation, could not be applied because other legal acts (parts thereof) that were passed later and/or were higher-ranking legal acts that regulated the respective relationships differently from the impugned legal acts (parts thereof) had to be applied (ruling of 28 March 2006 and the decisions of 8 August 2006 and 13 November 2007). ... such legal acts (parts thereof) that are applied on a temporary basis and the term of the application of which and the relationships regulated by which have ended at the time of the consideration of the constitutional justice case, even though such acts (parts thereof) have not officially been declared invalid, may also be equated to invalid legal acts (parts thereof).

Thus, it needs to be noted that, in cases where not courts, but other subjects (*inter alia*, a group of not less than 1/5 of all the members of the Seimas) specified in Article 106 of the Constitution, apply to the Constitutional Court and where an impugned legal act (part thereof) should be equated to legal acts (parts thereof) that are no longer valid, since it is applied on a temporary basis and there is an established term of its application and the relationships regulated by it have ended, the Constitutional Court has the right to dismiss the instituted legal proceedings; however, the Constitutional Court is not obliged to do so in every situation. When deciding whether to dismiss the instituted legal proceedings, the Constitutional Court must take account of the circumstances of the case before it.

The powers of the Constitutional Court to decide on an investigation into the constitutionality of a legal act that is no longer applicable

The Constitutional Court's ruling of 29 June 2012

In its decision of 13 November 2007, the Constitutional Court held that the application of a court to the Constitutional Court with a petition requesting an investigation into the compliance of a legal act with a higher-ranking legal act, *inter alia*, with the Constitution, and an investigation into that compliance are not an objective in itself; the purpose of the application (as a constitutional institution) of a court to the Constitutional Court is to ensure the administration of justice. In the same decision, it was also held that, even in such situations where courts apply to the Constitutional Court after they, in the course of the administration of justice, have doubts regarding the conformity of a lower-ranking legal act with higher-ranking legal acts, *inter alia* (and, first of all), with the Constitution, the Constitutional Court is not obliged to consider a case where the respective legal act is not only invalid (since the compliance of invalid legal acts with higher-ranking legal acts may be investigated and is normally investigated), but is also not applicable at all (i.e. it does not apply in general and not solely in the case under consideration by the respective court that has applied to the Constitutional Court with the respective petition). In addition, this circumstance must always be assessed when a law on the state budget and on municipal budgets or any other act intended for a specific budget period is impugned.

Moreover, in the said decision, the Constitutional Court held that every law on the state budget and on municipal budgets is a law of time-limited validity and time-limited application; the financing of the administrators of allocations from the funds of the state budget and municipal budgets is completed once the given budget year ends, i.e. on the 31st of December of that year; after this date, the law on the state budget and on municipal budgets may not be applied at all, *inter alia* – it needs to be particularly emphasised – after the said date, the transfer of allocations of the previous budget year to any administrator of allocations is impossible in such a way that would create the impression that the said transfer was made in the previous budget year, since a new budget year has started; therefore, even if it were established that the impugned legal regulation was in conflict with the Constitution, no intervention of the law-making subjects (Seimas and the Government, respectively) into that legal regulation is possible, since the respective legal acts were intended for the regulation of the relationships that are over and, thus, they no longer exist; such an intervention would be meaningless and irrational, since this would mean that the respective law-making subjects try to regulate the past; consequently, this would mean that they attempt to change the past.

The powers of the Constitutional Court to decide on an investigation into the constitutionality of a legal act that is no longer applicable

The Constitutional Court's ruling of 15 February 2013

In its ruling of 22 December 2011, the Constitutional Court noted that, in cases where not courts, but other subjects (*inter alia*, a group of not less than 1/5 of all the members of the Seimas) specified in Article 106 of the Constitution, apply to the Constitutional Court and where an impugned legal act (part thereof) should be equated to legal acts (parts thereof) that are no longer valid, since the impugned legal act (part thereof) is applied on a temporary basis and the relationships regulated by it have ended, even though this act (part thereof) is not recognised invalid officially, the Constitutional Court has the right to dismiss the instituted legal proceedings; however, the Constitutional Court is not obliged to do so in every situation. When deciding whether to dismiss the instituted legal proceedings, the Constitutional Court must take account of the circumstances of the case before it.

Thus, when a certain legal act is not only invalid, but also must not be applied at all, the Constitutional Court has the discretion to decide on an investigation into the constitutionality of such a legal act. When doing so, it must assess not only whether this law is intended for a certain budgetary period, but also other important circumstances, *inter alia*, whether such an investigation could be significant for the adoption of the budget laws of the subsequent year.

The duty of the Constitutional Court to examine the petition of a person referred to in Paragraph 4 (wording of 21 March 2019) of Article 106 of the Constitution, regardless of whether the impugned legal act is in force

The Constitutional Court's ruling of 25 November 2019

The Constitutional Court has held on more than one occasion that the wording “shall be grounds ... to dismiss the instituted legal proceedings” of Paragraph 4 (wording of 11 July 1996) of Article 69 of the Law on the Constitutional Court should be interpreted as establishing that, in cases where not courts, but other subjects specified in Article 106 of the Constitution, have applied to the Constitutional Court and the impugned legal act (part thereof) is no longer in force, i.e. it has been declared no longer valid (has been annulled or amended) or its validity has expired, the Constitutional Court, taking account of the circumstances of the case under consideration, has the right to dismiss the instituted legal proceedings (*inter alia*, the rulings of 28 March 2006 and 2 May 2012 and the decision of 7 October 2014), and it should not be interpreted as establishing that, in every case where the impugned legal act (part thereof) has been annulled, the instituted legal proceedings must be dismissed (*inter alia*, the rulings of 21 August 2002 and 28 March 2006).

The Constitutional Court has also held that the official constitutional doctrine concerning the admissibility of the petitions received at the Constitutional Court, according to which the Constitutional Court also has the powers to investigate the compliance of laws and other legal acts (parts thereof) that are no longer in force with the Constitution (other higher-ranking legal acts), has been developed “upon the differentiation of the subjects that are specified in Article 106 of the Constitution and have the powers to apply to the Constitutional Court: the official constitutional doctrine eventually consolidated the provision that, in cases where courts apply to the Constitutional Court after they, in the course of the administration of justice, have faced doubts about the compliance of lower-ranking legal acts with higher-ranking legal acts, *inter alia* (and, first of all), with the Constitution, under the Law on the Constitutional Court (*inter alia*, Paragraph 4 (wording of 11 July 1996) of Article 69 thereof), the Constitutional Court does not have the powers to dismiss the instituted legal proceedings (case) and must consider such a case; whereas in cases where other subjects specified in Article 106 of the Constitution apply to the Constitutional Court, the Constitutional Court is allowed, taking account of the circumstances of the constitutional justice case under consideration, to dismiss or not to dismiss the instituted legal proceedings (case)” (ruling of 28 March 2006).

In this context, it should be emphasised that, in the jurisprudence of the Constitutional Court, the provisions of the official constitutional doctrine consolidating the powers of the Constitutional Court to investigate the compliance of laws and other legal acts (parts thereof) that are no longer in force with the Constitution (other higher-ranking legal acts) were formulated in the rulings or decisions of the Constitutional Court adopted before 1 September 2019, when the Law Amending Articles 106 and 107 of the Constitution of the Republic of Lithuania, adopted by the Seimas on 21 March 2019, entered into force. Article 1 of this law supplemented Article 106 of the Constitution with the new Paragraph 4, establishing that every person has the right to apply to the Constitutional Court concerning the legal acts specified in Paragraphs 1 and 2 of Article 105 of the Constitution if a decision adopted on the basis of these acts has violated the constitutional rights or freedoms of the person and the person has exhausted all legal remedies; the procedure for the implementation of this right is established by the Law on the Constitutional Court. Article 2 of the Law Amending Articles 106 and 107 of the Constitution supplemented Article 107 of the Constitution with the new Paragraph 3, establishing that, in the case heard subsequent to the application by a person referred to in Paragraph 4 of Article 106 of the Constitution, the decision adopted by the Constitutional Court that a law (or part thereof) or another act (or part thereof) of the Seimas, an act of the President of the Republic, or an act (or part thereof) of the Government is in conflict with the Constitution constitutes a basis for renewing, according to the procedure established by law, the proceedings concerning the implementation of the violated constitutional rights or freedoms of that person.

Thus, as of 1 September 2019, the Law Amending Articles 106 and 107 of the Constitution consolidated the institution of individual constitutional complaints in the Constitution: in defence of his/her constitutional rights or freedoms, every person has the right to apply to the Constitutional Court requesting it to investigate whether legal acts whose review falls within the competence of the Constitutional Court are in compliance with the Constitution (another higher-ranking act) if a decision adopted on the basis of

these legal acts has possibly violated the constitutional rights or freedoms of the person (Paragraph 4 (wording of 21 March 2019) of Article 106 of the Constitution); the right to apply to the Constitutional Court is implemented after the person has exhausted all legal remedies and in accordance with the other conditions established in the Law on the Constitutional Court (Paragraph 4 (wording of 21 March 2019) of Article 106 of the Constitution), *inter alia*, within the time limit set by this law; in the constitutional justice case heard subsequent to the application by the person referred to above, the decision of the Constitutional Court that the respective legal act (part thereof) is in conflict with the Constitution (another higher-ranking act) constitutes a basis for renewing, according to the procedure established by law, the proceedings in order to defend the constitutional rights or freedoms of the said person (Paragraph 3 (wording of 21 March 2019) of Article 107 of the Constitution).

It should be emphasised that the consolidation of the institution of individual constitutional complaints in the Constitution is not an objective in itself. It is aimed at enabling the effective protection of those constitutional rights or freedoms of a person that could be violated by decisions adopted on the basis of legal acts (parts thereof) contrary to the Constitution. In this context, it should be noted that, under Paragraph 2 of Article 6 of the Constitution, everyone may defend his/her rights by invoking the Constitution. In its ruling of 12 April 2001, the Constitutional Court held that, according to the Constitution, the possibility of defending the violated rights must be real. In view of this, the basis provided for in Paragraph 3 (wording of 21 March 2019) of Article 107 of the Constitution for renewing the respective proceedings in order to defend the constitutional rights or freedoms of a person referred to in Paragraph 4 (wording of 21 March 2019) of Article 106 of the Constitution – a decision of the Constitutional Court that a law (or part thereof) or another act (or part thereof) of the Seimas, an act of the President of the Republic, or an act (or part thereof) of the Government is in conflict with the Constitution – is necessary so that, in the exercise of the right, consolidated in Paragraph 1 of Article 30 of the Constitution, of a person whose constitutional rights or freedoms have been violated to apply to a court, a decision adopted on the basis of a legal act (part thereof) contrary to the Constitution would be reviewed with the aim of removing the violation of the constitutional rights or freedoms of the person and/or compensating the person for the damage caused as a result of this violation.

Having consolidated, by means of the provisions of Paragraph 4 (wording of 21 March 2019) of Article 106 and Paragraph 3 (wording of 21 March 2019) of Article 107 of the Constitution, the institution of individual constitutional complaints, the formerly formulated official constitutional doctrine consolidating the powers of the Constitutional Court to investigate also the compliance of laws and other legal acts (parts thereof) that are no longer in force with the Constitution (other higher-ranking legal acts) has been developed in the jurisprudence of the Constitutional Court by taking into account that also the persons referred to in Paragraph 4 (wording of 21 March 2019) of Article 106 of the Constitution may apply to the Constitutional Court concerning the legal acts specified in Paragraphs 1 and 2 of Article 105 of the Constitution.

In view of this, it should be noted that, if a person referred to in Paragraph 4 (wording of 21 March 2019) of Article 106 of the Constitution has applied to the Constitutional Court with a request to investigate the constitutionality of the legal act (part thereof) that served as a basis for adopting a decision that could violate the constitutional rights or freedoms of the person and if the Constitutional Court does not decide this question on the merits in cases where the impugned law or another legal act is no longer in force, i.e. it has been declared no longer valid (has been annulled or amended) or its validity has expired, this would prevent such a person from defending his/her violated constitutional rights or freedoms; at the same time, other values consolidated, defended, and protected by the Constitution could also be violated. The interpretation of the Constitution that, purportedly, the Constitutional Court has the right, taking into account the circumstances of the case under consideration, to dismiss the instituted proceedings (case) where a person referred to in Paragraph 4 of Article 106 of the Constitution has applied to the Constitutional Court and the impugned legal act (part thereof) is no longer in force, i.e. it has been declared no longer valid (has been annulled or amended) or its validity has expired, would be incompatible with the purpose of the institution of individual constitutional complaints to enable the effective protection of the

constitutional rights or freedoms of a person that have possibly been violated by a decision adopted on the basis of legal acts (parts thereof) contrary to the Constitution.

Consequently, in cases where a person referred to in Paragraph 4 (wording of 21 March 2019) of Article 106 of the Constitution, after having exhausted all legal remedies and in accordance with the other conditions established in the Law on the Constitutional Court, applies to the Constitutional Court requesting it to investigate whether a law (part thereof) or another legal act (part thereof) is in compliance with the Constitution (another higher-ranking legal act) if a decision adopted on the basis of this law (part thereof) or another legal act (part thereof) could violate the constitutional rights or freedoms of the person, the Constitutional Court has the duty to examine the petition of this person, irrespective of whether the impugned law or another legal act is or is not in force at the time of considering the respective constitutional justice case.

Thus, the wording “shall be grounds ... to dismiss the instituted legal proceedings” of Paragraph 4 (wording of 11 July 1996) of Article 69 of the Law on the Constitutional Court should be interpreted as establishing that, in cases where not courts and not the persons referred to in Paragraph 4 (wording of 21 March 2019) of Article 106 of the Constitution, but other subjects specified in Article 106 of the Constitution, have applied to the Constitutional Court and the impugned legal act (part thereof) is no longer in force, i.e. it has been declared no longer valid (has been annulled or amended) or its validity has expired, the Constitutional Court, taking account of the circumstances of the case under consideration, has the right to dismiss the instituted legal proceedings, and it should not be interpreted as establishing that, in every case where the impugned legal act (part thereof) has been annulled, the instituted legal proceedings must be dismissed.

The duty of the Constitutional Court to examine an impugned legal act (part thereof) that is no longer in force

The Constitutional Court’s ruling of 25 November 2019

... in the exercise of its constitutional powers, under Paragraph 4 (wording of 11 July 1996) of Article 69 of the Law on the Constitutional Court, in cases where not courts and not the persons referred to in Paragraph 4 (wording of 21 March 2019) of Article 106 of the Constitution, but other subjects specified in Article 106 of the Constitution, have applied to the Constitutional Court and the impugned legal act (part thereof) is no longer in force, i.e. it has been declared no longer valid (has been annulled or amended or its validity has expired), taking into account the circumstances of the constitutional justice case under consideration and having held that, if the constitutional justice case under consideration is not solved on its merits, this could lead to the preconditions for violating the values consolidated, defended, and protected by the Constitution, *inter alia*, a public interest defended by the Constitution, the Constitutional Court may not dismiss the instituted proceedings (case).

8.4. THE FOUNDATIONS OF LEGAL PROCEEDINGS AT THE CONSTITUTIONAL COURT

8.4.1. The subjects that have the powers to apply to the Constitutional Court and the requirements for petitions

Application by a group of members of the Seimas to the Constitutional Court; the withdrawal of the signatures of the members of the Seimas from a petition

The Constitutional Court’s decision of 15 December 2004

Under Article 106 of the Constitution, not less than 1/5 of all the members of the Seimas have the right to apply to the Constitutional Court. ... This means that a petition must be signed by not less than 29 members of the Seimas (decision of 26 August 1993). The will of the members of the Seimas to apply to the Constitutional Court must be expressed clearly and unambiguously (decision of 24 April 2002). If a petition to the Constitutional Court is submitted by a group of less than 29 members of the Seimas, it must be held that the subject that is established in the Constitution and is allowed to file a petition ... is absent.

[...]

If the Constitutional Court granted the request of the members of the Seimas who withdrew their signatures from the petition received at the Constitutional Court ... (and requesting an investigation into the compliance of the impugned provision ... with the Constitution) to adopt the decision to refuse to consider the said ... petition of the group of members of the Seimas, then the Constitutional Court would, in principle, deny the already implemented right of the group of members of the Seimas, i.e. a subject that has the right, under the Constitution ... to apply to the Constitutional Court with a petition requesting an investigation into whether a legal act is in conflict with the Constitution. Thus, the Constitutional Court would deny the legitimate expectation of the other ... members of the Seimas who signed the aforesaid petition ... of the group of members of the Seimas that their already implemented right to apply, together with other members of the Seimas, to the Constitutional Court requesting an investigation into the compliance of a legal act with the Constitution will not be denied after their joint petition is received at the Constitutional Court and the procedural actions, indicated in the Law on the Constitutional Court and the Rules of the Constitutional Court, are commenced.

The duty of administrative courts that assess the compliance of legal acts with higher-ranking legal acts to verify whether such higher-ranking legal acts themselves are in conformity with legal acts of even a higher level

The Constitutional Court's ruling of 28 March 2006

... at present, such a legal regulation is established [by means of] laws whereby a decision on the compliance of legal acts passed by other law-making subjects (thus, not those passed by the Seimas, the President of the Republic, or the Government and not those adopted by referendum) with higher-ranking legal acts, *inter alia* (and, first of all), with the Constitution, is assigned to the jurisdiction of administrative courts. ...

[...]

... an investigation into whether legal acts (parts thereof) passed by other law-making subjects (thus, not those passed by the Seimas, the President of the Republic, or the Government and not those adopted by referendum) are in conflict with higher-ranking legal acts, *inter alia* (and, first of all), with the Constitution, and the adoption of the respective decisions imply the necessity for an administrative court that decides a case to ascertain whether those higher-ranking legal acts (parts thereof) themselves are in conformity with legal acts of an even higher level, *inter alia* (and, first of all), with the Constitution, and, if there are doubts, to take measures provided for in the Constitution and laws in order to remove the said doubts, certainly, without interfering with the powers assigned to the Constitutional Court. If this were not done, there would be the risk to adopt such a decision that would not be a just one, i.e. to apply a certain legal act (part thereof) based on such a higher-ranking legal act that would be declared in conflict with a legal act of an even higher level, or even with the Constitution itself, if a proper investigation were carried out, or not to apply a certain legal act (part thereof) declared in conflict with a higher-ranking legal act by the administrative court, even though that higher-ranking legal act would have to be declared in conflict with a legal act of an even higher level, or even with the Constitution itself, if a proper investigation were carried out. If this happened, the preconditions would be created for violating the values (*inter alia*, the constitutional rights of a person) that are consolidated, protected, and defended by the Constitution.

In this respect, an investigation, assigned [by means of laws] to the jurisdiction of administrative courts, into the compliance of legal acts (parts thereof) passed by other law-making subjects (thus, not those passed by the Seimas, the President of the Republic, or the Government or not those adopted by referendum) with higher-ranking legal acts, except the Constitution itself, implies the initiation of the respective constitutional justice case at the Constitutional Court and, thus, also the duty of administrative courts to apply in such cases to the Constitutional Court with the respective petition if an administrative court has doubts about the conformity of that higher-ranking legal act (part thereof) passed by the Seimas,

the President of the Republic, or the Government or that adopted by referendum with a legal act of an even higher level, *inter alia* (and, first of all), with the Constitution.

The right of a party to a case to request the court that considers the case to apply to the Constitutional Court

The Constitutional Court's ruling of 28 March 2006

Interpreting Paragraph 2 of Article 6 and Paragraph 1 of Article 30 of the Constitution in the context of Paragraph 1 of Article 109 and Article 110 of the Constitution, as well as in the context of the constitutional principle of a state under the rule of law, it needs to be noted that the right of each person to defend his/her rights on the basis of the Constitution and the right of a person whose constitutional rights or freedoms are violated to apply to a court also imply that each party of a case considered by a court, when such a party has doubts over the compliance of a law or another legal act (part thereof) with the Constitution (with another higher-ranking legal act), where such a law or another legal act (part thereof) may be applied in that case and where an investigation into the compliance of which with the Constitution (with another higher-ranking legal act) falls under the jurisdiction of the Constitutional Court (i.e. when such a party doubts the compliance of a certain act (part thereof) of the Seimas, the President of the Republic, or the Government or an act (part thereof) adopted by referendum with the Constitution (with another higher-ranking legal act)), has the right to apply to a court of general jurisdiction or a specialised court (established under Paragraph 2 of Article 111 of the Constitution) that considers the respective case, requesting such a court to suspend the consideration of the case and to apply to the Constitutional Court with the petition to investigate and to decide whether the legal act (part thereof) that was passed by the Seimas, the President of the Republic, or the Government or adopted by referendum and is applicable in the same case is in conflict with a higher-ranking legal act, *inter alia* (and, first of all), with the Constitution.

The duty of courts to provide arguments in cases where they decide to apply or not to apply (despite the request of a party to the case) to the Constitutional Court

The Constitutional Court's ruling of 28 March 2006

In its ruling of 16 January 2006, the Constitutional Court held the following: the constitutional imperatives that only courts administer justice, that law must be public, as well as the requirement arising out of the Constitution to consider a case in a fair manner, also imply that every final court act must be based on legal arguments (reasoning); the argumentation must be rational; the legal clarity requirement, which arises out of the constitutional principle of a state under the rule of law, means, *inter alia*, that a final court act must not contain any concealed arguments or any non-specified circumstances that are important for adopting a fair final court act; final court acts must be clear for both persons participating in a case and other persons.

The said requirements on the argumentation of court decisions are also applicable to decisions adopted by courts of general jurisdiction or by specialised courts (established under Paragraph 2 of Article 111 of the Constitution) to apply or (even though this is requested by a party in a case considered by that court) not to apply to the Constitutional Court with a petition requesting an investigation into and a decision on whether a legal act (part thereof) passed by the Seimas, the President of the Republic, or the Government or that adopted by referendum, where the said legal act (part thereof) must be applied in the said case, is in conflict with a higher-ranking legal act (*inter alia* (and, first of all), with the Constitution).

The particularities of application by courts to the Constitutional Court

The Constitutional Court's ruling of 28 March 2006

... application by courts (those of general jurisdiction and specialised ones) to the Constitutional Court, compared with application to the Constitutional Court by other subjects specified in Article 106 of the Constitution, with a petition requesting an investigation into and a decision on whether a legal act (part thereof) passed by the Seimas, the President of the Republic, or the Government or that adopted by referendum is in conflict with a higher-ranking legal act, *inter alia* (and, first of all), with the Constitution,

shows that application by courts is also special because courts, having doubted about the compliance of a legal act (part thereof) passed by the Seimas, the President of the Republic, or the Government or that adopted by referendum with a higher-ranking legal act, *inter alia* (and, first of all), with the Constitution, not only may, but also must apply to the Constitutional Court.

In this context, it should be noted that, under the Constitution, a court of general jurisdiction or a specialised court (established under Paragraph 2 of Article 111 of the Constitution) may apply to the Constitutional Court with a petition requesting an investigation into, and an a decision on whether not any constitutional law (part thereof) is in conflict with the Constitution, but only such a constitutional law that must be applied in the respective case under consideration by that court, also whether not any law (part thereof) (as well as the Statute of the Seimas (part thereof)) is in conflict with the Constitution and constitutional laws, but only the one that must be applied in the respective case under consideration by that court, also whether not any statutory legal act (part thereof) of the Seimas is in conflict with the Constitution, constitutional laws, laws, as well as the Statute of the Seimas, but only the one that must be applied in the respective case under consideration by that court, also whether not any act of the President of the Republic is in conflict with the Constitution, constitutional laws, and laws, but only the one that must be applied in the respective case under consideration by that court, as well as whether not any act (part thereof) of the Government is in conflict with the Constitution, constitutional laws, and laws, but only the one that must be applied in the respective case under consideration by that court.

[...]

It should be noted that the Constitution does not tolerate any such situations where a certain court that, in a case considered by it, must apply a legal act (part thereof) concerning the compliance of which with a higher-ranking legal act, *inter alia* (and, first of all), with the Constitution, another petitioner (for example, another court) has already applied to the Constitutional Court, neither (if it doubts the compliance of the said legal act (part thereof) with a higher-ranking legal act, *inter alia* (and, first of all), with the Constitution) suspends the consideration of the respective case and applies to the Constitutional Court in order that these doubts would be removed nor (if it doubts the compliance of the said legal act (part thereof) with a higher-ranking legal act, *inter alia* (and, first of all), with the Constitution) applies this legal act (part thereof), but when it has the information that another petitioner (for example, another court) has already applied to the Constitutional Court concerning the compliance of that legal act (part thereof) with a higher-ranking legal act, *inter alia* (and, first of all), with the Constitution, suspends the consideration of the case and does not decide the case on the merits before the Constitutional Court completes the consideration of the respective case following the petition of the said another petitioner.

The right of courts to apply to the Constitutional Court (*locus standi*) (Paragraph 2 of Article 110 of the Constitution)

The Constitutional Court's decision of 22 May 2007

Under Paragraph 2 of Article 110 of the Constitution, in cases when there are grounds to believe that a law or another legal act that should be applied in a concrete case is in conflict with the Constitution, the judge must suspend the consideration of the case and must apply to the Constitutional Court, requesting that it decide whether the law or another legal act in question is in compliance with the Constitution.

[...]

Consequently, under the Constitution ... a court may apply to the Constitutional Court with a petition requesting an investigation into whether not any law (part thereof) or any other legal act (part thereof) is in conflict with the Constitution, but only such a law (part thereof) or another legal act (part thereof) that must be applied in the case considered by that court.

Thus, under the Constitution ... a court does not have the *locus standi* to apply to the Constitutional Court with a petition requesting an investigation into whether such a law (part thereof) or another legal act (part thereof) that must not be applied in the case considered by that court is in conflict with the Constitution.

[...]

In addition, if a court applies to the Constitutional Court with a petition requesting an investigation into whether such a law (part thereof) or another legal act (part thereof) that should/could not be applied in the case considered by that court is in conflict with the Constitution (thus, when the court does not have a *locus standi*), the Constitutional Court must decide, while taking account of the entirety of the arguments substantiating such a petition, whether the reasoning of the said petition is legal.

The duty of a court, if it has doubts, to apply to the Constitutional Court concerning the constitutionality of a legal act applicable in a case before that court (Paragraph 2 of Article 110 of the Constitution)

The Constitutional Court's ruling of 24 October 2007

The powers of courts to suspend the consideration of a case and apply to the Constitutional Court with a petition requesting an investigation into the compliance of a legal act with the Constitution are *expressis verbis* consolidated in the Constitution: Paragraph 2 of Article 110 of the Constitution prescribes that, in cases when there are grounds to believe that a law or another legal act that should be applied in a concrete case is in conflict with the Constitution, the judge must suspend the consideration of the case and must apply to the Constitutional Court, requesting that it decide whether the law or another legal act in question is in compliance with the Constitution.

... the following provisions of the official constitutional doctrine should be mentioned ... in which Article 110 of the Constitution is interpreted by relating it to other provisions of the Constitution, *inter alia*, to the constitutional principle of a state under the rule of law and to the provisions of the Constitution regarding specialised (administrative) courts:

- one of the essential elements of the principle of a state under the rule of law, which is consolidated in the Constitution, is the principle that any legal act that is in conflict with a higher-ranking legal act must not be applied;

- upon establishing, in Article 110 of the Constitution, both the prohibition on applying a law that is in conflict with the Constitution and the duty of a court considering a case, in the event of doubts whether a law or another legal act applicable in the case is in conflict with the Constitution, to suspend the consideration of the case and apply to the Constitutional Court, requesting it to decide whether the law or another legal act in question is in compliance with the Constitution, attempts are made to ensure that a legal act (part thereof) that is in conflict with the Constitution would not be applied, that no anticonstitutional legal effects would appear due to the application of the said legal act (part thereof), and that no rights of a person would be violated, and that a person in whose regard a legal act inconsistent with the Constitution or the law has been applied would not, due to that, unreasonably acquire any rights or a certain legal status that does not belong to him/her;

- in cases where a court that considers a case faces doubts whether a law (another legal act) applicable in the case is in conflict with the Constitution, it must apply to the Constitutional Court and request it to decide whether this law (other legal act) is in compliance with the Constitution and, until the Constitutional Court decides this issue, the consideration of the case in that court must not be continued, i.e. it must be suspended ...

- a legal regulation established by the legislature must be such that would ensure access for the Constitutional Court to a suspended case that contains information about the circumstances due to which an impugned legal act must be applied in the said case; only in this way the necessary conditions can be created in order that the Constitutional Court might administer constitutional justice and decide whether a law or another legal act that must be applied in the case considered by that court is in conflict with the Constitution (or whether a substatutory legal act of the Seimas, an act of the President of the Republic, or an act of the Government is in conflict with the Constitution and/or laws);

- if a court, after it has faced doubts about the compliance of a law applicable in a case with the Constitution, did not suspend the consideration of the case and did not apply to the Constitutional Court so that those doubts could be removed and, if the legal act the compliance of which with the Constitution is

doubtful were applied in the case, the court would take the risk of adopting such a decision that would not be a just one;

- under the Constitution, the Constitutional Court decides on the compliance of not all legal acts (parts thereof) with the Constitution (other higher-ranking legal acts), but only whether legal acts (part thereof) passed by the Seimas, the President of the Republic, or the Government or adopted by referendum are in conflict with a higher-ranking legal act, *inter alia* (and, first of all), with the Constitution;

- under the Constitution, such legal situations are impermissible where it would not be possible to verify in a court whether legal acts (parts thereof), *inter alia*, legal acts issued by ministers, other lower-ranking legal acts, as well as legal acts issued by municipalities, the control of which as regards their compliance with the Constitution does not fall within the jurisdiction of the Constitutional Court, are in conflict with the Constitution and laws;

[...]

- at present, such a legal regulation is established [by means of] laws whereby a decision on the compliance of legal acts passed by other law-making subjects (thus, not those passed by the Seimas, the President of the Republic, or the Government and not those adopted by referendum) with higher-ranking legal acts, *inter alia* (and, first of all), with the Constitution, is assigned to the jurisdiction of administrative courts; if an administrative court rules such a legal act to be in conflict with the Constitution (another higher-ranking legal act), then, under the Constitution and laws, such a decision of the said court has *erga omnes* impact on the whole practice of the application of the respective legal acts (parts thereof) ...

Requirements for court petitions filed with the Constitutional Court

The Constitutional Court's ruling of 24 October 2007

... The requirements (*inter alia*, regarding the argumentation, clarity, and comprehensiveness of court decisions) for court final acts are also applicable to decisions adopted by courts of general jurisdiction or by specialised courts (established under Paragraph 2 of Article 111 of the Constitution) to apply or (even though this is requested by a party in a case considered by that court) not to apply to the Constitutional Court with a petition requesting an investigation into and a decision on whether a legal act (part thereof) passed by the Seimas, the President of the Republic, or the Government or that adopted by referendum, where the said legal act (part thereof) must be applied in the said case, is in conflict with a higher-ranking legal act, *inter alia* (and, first of all), with the Constitution (rulings of 28 March 2006 and 5 July 2007).

... as the Constitutional Court has held in its acts, courts that apply to the Constitutional Court with a petition requesting an investigation into whether a law or another legal act (part thereof) is in conflict with the Constitution, when providing arguments in support of their opinion, expressed in their petition, on the conflict of a law or another legal act (part thereof) with the Constitution, may not limit themselves to general reasoning or general statements, or to the statement that the law or another legal act (part thereof), in their opinion, is in conflict with the Constitution; courts must clearly indicate which impugned articles (paragraphs, items thereof) of legal acts and to what extent, in their opinion, are in conflict with the Constitution, and must substantiate their position on the non-compliance of every impugned provision of the respective legal act (part thereof) by clearly formulated legal arguments (rulings of 12 December 2005, 16 January 2006, and 17 January 2006 and the decisions of 17 January 2006, 5 July 2007, 6 September 2007, and 12 September 2007).

The right of courts to apply to the Constitutional Court (*locus standi*)

The Constitutional Court's decision of 13 November 2007

... a court that applies to the Constitutional Court with a petition must always have a *locus standi*. For instance, under the Constitution ... a court has the *locus standi* to apply to the Constitutional Court with a petition requesting an investigation into the constitutionality of such a law (part thereof) or another legal act (part thereof) that should (could) be applied in a case under consideration in that court, or such a law (part thereof) or another legal act (part thereof) that is not directly intended for the regulation of those

relationships regarding which a decision must be adopted in the respective case, but the fact that account is taken of this law or another legal act (part thereof), in the opinion of the court, does not permit the administration of justice in the respective case (ruling of 28 March 2006 and the decisions of 22 May 2007, 27 June 2007, and 5 July 2007).

Requirements for petitions filed with the Constitutional Court

The Constitutional Court's decision of 29 October 2009

... as held by the Constitutional Court, the position of a petitioner concerning the compliance of a legal act (part thereof) with the Constitution in view of the content of norms and/or the scope of regulation must be indicated clearly and unambiguously, the petition must contain the arguments and reasoning substantiating the doubt of the petitioner that the legal act (part thereof) is in conflict with the Constitution. A petition requesting an investigation into the compliance of a legal act (part thereof) with the Constitution according to the content of norms and/or the scope of regulation must also clearly indicate the legal arguments substantiating the doubt of the petitioner as regards every concretely indicated article (part thereof) or item of an impugned legal act the compliance of which with the concretely indicated provision of the Constitution is doubtful for the petitioner (decision of 16 April 2004, the ruling of 12 December 2005, the decisions of 14 March 2006 (case no 14/03) and 29 March 2006, and the ruling of 20 December 2007).

Application by a court to the Constitutional Court with a petition requesting the interpretation of a final act adopted by the Constitutional Court

See 8.5. Acts adopted by the Constitutional Court, 8.5.4. The interpretation of acts adopted by the Constitutional Court, the decision of 22 April 2010 ("The interpretation of final acts adopted by the Constitutional Court where this is necessary so that such acts would be properly invoked in the administration of justice").

The purpose of application by a court to the Constitutional Court is to ensure that justice will be administered

The Constitutional Court's decision of 27 August 2013

... the application by a court to the Constitutional Court with a petition for an investigation into the compliance of a legal act with a higher-ranking legal act, *inter alia*, with the Constitution, as well as an investigation into the said compliance, is not an objective in itself; the purpose of the application (as a constitutional institution) by a court to the Constitutional Court is to ensure the administration of justice (decision of 13 November 2007 and the rulings of 2 September 2011 and 29 June 2012).

A resolution of the Seimas to apply to the Constitutional Court must be adopted in accordance with the rules for adopting legal acts, as laid down in the Statute of the Seimas

The Constitutional Court's decision of 30 December 2015

... as held in the Constitutional Court's ruling of 20 February 2013, not only laws, but also substatutory legal acts of the Seimas must be adopted in compliance with the rules for adopting legal acts, as established in the Statute of the Seimas. The same also applies to resolutions of the Seimas to apply to the Constitutional Court with a petition requesting an investigation of legal acts with the Constitution or another higher-ranking legal act.

The right of courts to apply to the Constitutional Court (*locus standi*) (Paragraph 2 of Article 110 of the Constitution)

The Constitutional Court's decision of 7 July 2016

Under Paragraph 2 of Article 110 of the Constitution, in cases when there are grounds to believe that a law or another legal act that should be applied in a concrete case is in conflict with the Constitution, the

judge must suspend the consideration of the case and must apply to the Constitutional Court, requesting that it decide whether the law or another legal act in question is in compliance with the Constitution.

Under the Constitution, a court may apply to the Constitutional Court with a petition requesting an investigation into whether not any law (part thereof) or any other legal act (part thereof) is in conflict with the Constitution, but only such a law (part thereof) or another legal act (part thereof) that must be applied in the case considered by that court (decision of 27 June 2007). Under the Constitution, a court does not have the *locus standi* to apply to the Constitutional Court with a petition requesting an investigation into whether such a law (part thereof) or another legal act (part thereof) that must not be applied in the case considered by that court is in conflict with the Constitution (*inter alia*, the decisions of 22 May 2007 and 27 June 2007).

In this context, it should be noted that the provision that, under the Constitution, no court has the *locus standi* to apply to the Constitutional Court with a petition requesting an investigation into whether such a law (part thereof) or another legal act (part thereof) that should (could) not be applied in a case considered by the said court is in conflict with the Constitution also means that a court may not apply to the Constitutional Court with a petition requesting an investigation into the constitutionality of a legal regulation in situations where this is not required for the consideration of a concrete case.

The examination of factual circumstances on which an individual substatutory legal act is based falls within the competence of the court applying to the Constitutional Court concerning the assessment of the constitutionality of that legal act

The Constitutional Court's decision of 23 January 2019

... the examination of factual circumstances and data that form the basis for individual substatutory legal acts, as well as the assessment of the reasonableness and sufficiency of data, primarily falls within the competence of courts that consider the respective cases (*inter alia*, the rulings of 13 August 2007 and 2 March 2018).

A person referred to in Paragraph 4 (wording of 21 March 2019) of Article 106 of the Constitution does not have the right to apply to the Constitutional Court if the person seeks to defend the constitutional rights or freedoms of another person (other persons)

The Constitutional Court's decision (no KT33-A-S22/2019) of 16 October 2019

Paragraph 4 (wording of 21 March 2019) of Article 106 of the Constitution provides that every person has the right to apply to the Constitutional Court concerning the legal acts specified in Paragraphs 1 and 2 of Article 105 of the Constitution if a decision adopted on the basis of these acts has violated the constitutional rights or freedoms of the person and the person has exhausted all legal remedies.

Thus, under Paragraph 4 of Article 106 of the Constitution, only such a person whose constitutional rights or freedoms have possibly been violated by a decision adopted on the basis of the acts specified in Paragraphs 1 and 2 of Article 105 of the Constitution has the right to apply to the Constitutional Court; under Paragraph 4 (wording of 21 March 2019) of Article 106 of the Constitution, a person does not have the right to apply to the Constitutional Court if the person seeks to defend the constitutional rights or freedoms of another person (other persons).

Having failed to exhaust all remedies provided for by law for defending constitutional rights or freedoms and being no longer able to exhaust them, a person referred to in Paragraph 4 (wording of 21 March 2019) of Article 106 of the Constitution has no right to apply to the Constitutional Court

The Constitutional Court's decision (no KT34-A-S23/2019) of 17 October 2019

Under Paragraph 4 (wording of 21 March 2019) of Article 106 of the Constitution, every person has the right to apply to the Constitutional Court concerning the legal acts specified in Paragraphs 1 and 2 of Article 105 of the Constitution if a decision adopted on the basis of these acts has violated the constitutional

rights or freedoms of the person and the person has exhausted all legal remedies; the procedure for the implementation of this right is established by the Law on the Constitutional Court.

Paragraph 2 of Article 65 (wording of 16 July 2019) of the Law on the Constitutional Court provides that a person has the right to file a petition with the Constitutional Court for an investigation into the compliance of laws or other acts of the Seimas, the acts of the President of the Republic, or the acts of the Government with the Constitution or laws if: (1) a decision adopted on the basis of these acts has violated the constitutional rights or freedoms of the person, and (2) the person has exhausted all remedies provided for by law for defending constitutional rights or freedoms, including the right to apply to a court, and, after all possibilities established by law for filing a complaint against the decision of the court have been exhausted, the final and non-appealable decision is adopted by the court, and (3) not more than four months have passed from the day that the court decision referred to in Item 2 of this paragraph came into force.

In view of the above, under the Constitution and the Law on the Constitutional Court, a person has the right to apply to the Constitutional Court regarding the acts referred to in Paragraphs 1 and 2 of Article 105 of the Constitution only if, in accordance with the procedure laid down by law, the person has exhausted all remedies provided for by law for defending constitutional rights or freedoms, including the right to apply to a court, and, after all possibilities established by law for filing a complaint against the decision of the court have been exhausted, the final and non-appealable decision is adopted by the court.

[...]

It should be noted that, under Item 2 of Paragraph 1 (wording of 16 July 2019) of Article 70 of the Law on the Constitutional Court, where a person referred to in Paragraph 4 of Article 106 of the Constitution has not exhausted all remedies provided for by law for defending constitutional rights or freedoms, including the right to apply to a court, the President of the Constitutional Court, on his/her own initiative or upon a proposal from the justice, returns the petition to the petitioner.

It should also be noted that, where it is clear that a person referred to in Paragraph 4 of Article 106 of the Constitution is no longer able to make use of all remedies provided for by law for defending constitutional rights or freedoms, including the right to apply to a court and the right to file a complaint against the decision of a court, the decision to return the petition to the petitioner would be an objective in itself and meaningless.

Thus, under Item 2 of Paragraph 1 (wording of 16 July 2019) of Article 70 of the Law on the Constitutional Court, only where a person referred to in Paragraph 4 of Article 106 of the Constitution has not exhausted all remedies provided for by law for defending constitutional rights or freedoms, including the right to apply to a court and the right to file a complaint against the decision of a court, but may still exhaust them, the petition is returned to the petitioner.

In view of this, it should be held that, having failed to exhaust all remedies provided for by law for defending constitutional rights or freedoms and being no longer able to exhaust them, a petitioner has no right to apply under Paragraph 4 of Article 106 of the Constitution to the Constitutional Court with a petition requesting an investigation into the constitutionality of the legal acts specified in Paragraphs 1 and 2 of Article 105 of the Constitution.

A person referred to in Paragraph 4 (wording of 21 March 2019) of Article 106 of the Constitution does not have the right to apply to the Constitutional Court if the impugned legal regulation has not led to the adoption of a decision that may have violated the constitutional rights or freedoms of that person

The Constitutional Court's decision (no KT43-A-S31/2019) of 6 November 2019

Under Paragraph 4 (wording of 21 March 2019) of Article 106 of the Constitution, every person has the right to apply to the Constitutional Court concerning the legal acts specified in Paragraphs 1 and 2 of Article 105 of the Constitution if a decision adopted on the basis of these acts has violated the constitutional rights or freedoms of the person and the person has exhausted all legal remedies.

Thus, a person referred to in Paragraph 4 of Article 106 of the Constitution has the right to apply to the Constitutional Court requesting an investigation into the compliance with the Constitution and/or laws of not any acts specified in Paragraphs 1 and 2 of Article 105 of the Constitution, but only those acts specified therein a decision adopted on the basis of which has possibly violated the constitutional rights or freedoms of the person. Consequently, under the Constitution, the above-mentioned person does not have the right to apply to the Constitutional Court concerning the legal acts specified in Paragraphs 1 and 2 of Article 105 of the Constitution if [no such a decision has been adopted] on the basis of the said legal acts.

Individual constitutional complaints (Paragraph 4 (wording of 21 March 2019) of Article 106 and Paragraph 3 (wording of 21 March 2019) of Article 107 of the Constitution)

The Constitutional Court's ruling of 25 November 2019

... Article 1 of the Law Amending Articles 106 and 107 of the Constitution of the Republic of Lithuania supplemented Article 106 of the Constitution with the new Paragraph 4, establishing that every person has the right to apply to the Constitutional Court concerning the acts specified in Paragraphs 1 and 2 of Article 105 of the Constitution if a decision adopted on the basis of these acts has violated the constitutional rights or freedoms of the person and the person has exhausted all legal remedies; the procedure for the implementation of this right is established by the Law on the Constitutional Court. Article 2 of the Law Amending Articles 106 and 107 of the Constitution supplemented Article 107 of the Constitution with the new Paragraph 3, establishing that, in the case heard subsequent to the application by a person referred to in Paragraph 4 of Article 106 of the Constitution, the decision adopted by the Constitutional Court that a law (or part thereof) or another act (or part thereof) of the Seimas, an act of the President of the Republic, or an act (or part thereof) of the Government is in conflict with the Constitution constitutes a basis for renewing, according to the procedure established by law, the proceedings concerning the implementation of the violated constitutional rights and freedoms of that person.

Therefore, as of 1 September 2019, the Law Amending Articles 106 and 107 of the Constitution consolidated the institution of individual constitutional complaints in the Constitution: in defence of constitutional rights or freedoms, every person has the right to apply to the Constitutional Court requesting it to investigate whether legal acts whose review falls within the competence of the Constitutional Court are in compliance with the Constitution (another higher-ranking act) if a decision adopted on the basis of these legal acts has possibly violated the constitutional rights or freedoms of the person (Paragraph 4 (wording of 21 March 2019) of Article 106 of the Constitution); the right to apply to the Constitutional Court is implemented after the person has exhausted all legal remedies and in accordance with the other conditions established in the Law on the Constitutional Court (Paragraph 4 (wording of 21 March 2019) of Article 106 of the Constitution), *inter alia*, within the time limit set by this law; in the constitutional justice case heard subsequent to the application by the person referred to above, the decision of the Constitutional Court that the respective legal act (part thereof) is in conflict with the Constitution (another higher-ranking legal act) constitutes a basis for renewing, according to the procedure established by law, the proceedings in order to protect the constitutional rights or freedoms of the said person (Paragraph 3 (wording of 21 March 2019) of Article 107 of the Constitution).

It should be emphasised that the consolidation of the institution of individual constitutional complaints in the Constitution is not an objective in itself. It is aimed at enabling the effective protection of those constitutional rights or freedoms of a person that could be violated by decisions adopted on the basis of legal acts (parts thereof) contrary to the Constitution. In this context, it should be noted that, under Paragraph 2 of Article 6 of the Constitution, everyone may defend his/her rights by invoking the Constitution. In its ruling of 12 April 2001, the Constitutional Court held that, according to the Constitution, the possibility of defending the violated rights must be real. In view of this, the basis provided for in Paragraph 3 (wording of 21 March 2019) of Article 107 of the Constitution for renewing the respective proceedings in order to defend the constitutional rights or freedoms of a person referred to in Paragraph 4 (wording of 21 March 2019) of Article 106 of the Constitution – a decision of the Constitutional Court that a law (or part thereof) or another act (or part thereof) of the Seimas, an act of the

President of the Republic, or an act (or part thereof) of the Government is in conflict with the Constitution – is necessary so that, in the exercise of the right, consolidated in Paragraph 1 of Article 30 of the Constitution, of a person whose constitutional rights or freedoms have been violated to apply to a court, a decision adopted on the basis of a legal act (part thereof) contrary to the Constitution would be reviewed with the aim of removing the violation of the constitutional rights or freedoms of the person and/or compensating the person for the damage caused as a result of this violation.

A person referred to in Paragraph 4 (wording of 21 March 2019) of Article 106 of the Constitution has the right to apply to the Constitutional Court after having exhausted all remedies provided for by law for defending constitutional rights or freedoms

The Constitutional Court's decision (no KT63-A-S49/2019) of 11 December 2019

The Constitutional Court has noted that, under the Constitution and the Law on the Constitutional Court, a person has the right to apply to the Constitutional Court concerning the acts specified in Paragraphs 1 and 2 of Article 105 of the Constitution only if, in accordance with the procedure laid down by law, the person has exhausted all available remedies for defending constitutional rights or freedoms, including the right to apply to a court, and, after all possibilities established by law for filing a complaint against the decision of the court have been exhausted, the final and non-appealable decision is adopted by the court (decision (no KT37-A-S26/2019) of 22 October 2019).

Therefore, under the Constitution and the Law on the Constitutional Court, a person is deemed to have exhausted all remedies provided for by law for defending constitutional rights or freedoms only where not only all possibilities established by law for filing a complaint against the decision of the court have been exhausted, but also the final and non-appealable decision of the court is adopted and it has not protected the constitutional rights or freedoms of the said person.

The particularities of the right of a person referred to in Paragraph 4 (wording of 21 March 2019) of Article 106 of the Constitution to apply to the Constitutional Court (time limit for applying to the Constitutional Court)

The Constitutional Court's decision of 16 January 2020

... the right of a person referred to in Paragraph 4 (wording of 21 March 2019) of Article 106 of the Constitution to apply to the Constitutional Court must be implemented within the time limit set by the Law on the Constitutional Court; this time limit is linked to the date on which the final and non-appealable decision of the court came into force. It should be noted that a person referred to in Paragraph 4 (wording of 21 March 2019) of Article 106 of the Constitution is the only subject with the right to apply to the Constitutional Court with a petition for an investigation into the constitutionality of legal acts who is given the time limit for applying to the Constitutional Court.

[...]

... the time limit for filing a petition with the Constitutional Court by a person referred to in Paragraph 4 of Article 106 of the Constitution is not an objective in itself: it is sought thereby not to deny the stability of the legal relationships established and upheld by effective court decisions, as well as to provide time for this person to decide whether to apply to the Constitutional Court requesting it to investigate whether legal acts whose review falls within the competence of the Constitutional Court are in compliance with the Constitution (another higher-ranking act) if a decision adopted on the basis of these legal acts could violate the constitutional rights or freedoms of the person, and, having decided to apply to the Constitutional Court, to prepare and submit to the Constitutional Court a petition that meets the requirements established in the Law on the Constitutional Court.

The particularities of the right of a person referred to in Paragraph 4 (wording of 21 March 2019) of Article 106 of the Constitution to apply to the Constitutional Court (time limit for applying to the Constitutional Court)

The Constitutional Court's decision (no KT17-A-S17/2020) of 5 February 2020

The Constitutional Court has held that, among other conditions, the right of a person referred to in Paragraph 4 (wording of 21 March 2019) of Article 106 of the Constitution to apply to the Constitutional Court must be implemented within the time limit set by the Law on the Constitutional Court; this time limit is linked to the date on which the final and non-appealable decision of the court came into force (decision (no KT6-A-S6/2020) of 16 January 2020). The Constitutional Court has also held on more than one occasion that the constitutional right to apply to the Constitutional Court concerning the acts specified in Paragraphs 1 and 2 of Article 105 of the Constitution was acquired as of 1 September 2019 only by those persons with respect to whom the final and non-appealable decision of the court in the case concerning the violation of their constitutional rights or freedoms came into force on 1 May 2019 and later (*inter alia*, the decisions (nos KT29-A-S18/2019 and KT30-A-S19/2019) of 10 October 2019 and the decision (no KT58-A-S44/2019) of 3 December 2019).

Thus, the time limit for filing a petition with the Constitutional Court is calculated from the date on which the final and non-appealable decision of the court came into force also for those persons with respect to whom the final and non-appealable decision of the court in the case concerning the violation of their constitutional rights or freedoms came into force before 1 September 2019, but not earlier than on 1 May 2019.

The renewal of the time limit established for a person referred to in Paragraph 4 (wording of 21 March 2019) of Article 106 of the Constitution to apply to the Constitutional Court

The Constitutional Court's decision (no KT17-A-S17/2020) of 5 February 2020

... the time limit for applying to the Constitutional Court may be renewed only in exceptional cases, where it is established that, during the period of this time limit, exceptional and objective circumstances existed, which did not depend on the will of the person and prevented the person from exercising the right to apply to the Constitutional Court in a timely and proper manner. It should be noted that persons who believe that their constitutional rights or freedoms have been violated not only have the right to defend them but, having decided to exercise this right, have the duty to do so expeditiously, responsibly, carefully, and in good faith.

8.4.2. Issues that do not fall within the jurisdiction of the Constitutional Court and other grounds for refusing the consideration of petitions

The Constitutional Court does not investigate the compliance of a law with an international treaty ratified by the Seimas (Paragraph 1 of Article 105 and Paragraph 3 of Article 138 of the Constitution)

The Constitutional Court's decision of 25 April 2002

Paragraph 3 of Article 138 of the Constitution prescribes:

“International treaties ratified by the Seimas of the Republic of Lithuania shall be a constituent part of the legal system of the Republic of Lithuania.”

Interpreting this provision of the Constitution, the Constitutional Court has held that the said provision means that treaties ratified by the Seimas acquire the force of a law (ruling of 17 October 1995).

Under Paragraph 1 of Article 105 of the Constitution, the Constitutional Court considers and adopts decisions on whether the laws of the Republic of Lithuania or other acts adopted by the Seimas are in conflict with the Constitution of the Republic of Lithuania. Thus, under the Constitution, the Constitutional Court does not consider the conformity of a law with a legal act having the force of a law.

The development of the official constitutional doctrine does not constitute grounds for addressing the Constitutional Court repeatedly with the same petition or inquiry

The Constitutional Court's ruling of 28 March 2006

... as such, no development of the official constitutional doctrine (*inter alia*, such reinterpretation of the official constitutional doctrinal provisions where the official constitutional doctrine is modified) constitutes grounds for the subjects specified in Article 106 of the Constitution to apply to the Constitutional Court with a new petition requesting an investigation into whether such a law (part thereof) is in conflict with the Constitution (another higher-ranking legal act) whose compliance with the Constitution (another higher-ranking legal act) has already been investigated on the merits, or with such a petition that is analogous to a petition previously presented by a certain subject requesting an investigation into whether such a legal act (part thereof) is in conflict with the Constitution (another higher-ranking legal act) on which the Constitutional Court has already passed the decision to refuse to consider such a petition or the decision (ruling) to dismiss the instituted legal proceedings (case) (if the respective petition was received at the Constitutional Court and the preparation of the constitutional justice case for the hearing of the Constitutional Court began or if the respective petition has already been considered at the hearing of the Constitutional Court), thus, where the Constitutional Court did not decide the respective question on the merits.

As such, the change (reinterpretation, modification) of the constitutional doctrine formed by the Constitutional Court previously does not constitute grounds for the subjects specified in Article 106 of the Constitution to apply to the Constitutional Court with a new inquiry whether there were the violations of election laws during the elections of the President of the Republic or the elections of the members of the Seimas, whether the state of health of the President of the Republic allows him/her to continue to hold office, whether the international treaties of the Republic of Lithuania are in conflict with the Constitution, and whether the concrete actions of the members of the Seimas and state officials against whom an impeachment case has been instituted are in conflict with the Constitution.

The Constitutional Court does not have the powers to assess the inaction of law-making subjects (non-adoption of law-making decisions)

The Constitutional Court's decision of 8 August 2006

... under Paragraphs 1 and 2 of Article 105 of the Constitution, the Constitutional Court investigates whether namely legal acts as such adopted by state institutions (Seimas, the President of the Republic, or the Government) are in conflict with higher-ranking legal acts, *inter alia* (and, first of all), with the Constitution, but it does not investigate the non-adoption of law-making decisions by the said state institutions, i.e. the avoidance of or delay in adopting such decisions, as well as the failure to act that is determined by other motives.

The possibility of impugning, from a different aspect, a legal act whose compliance with the Constitution has already been investigated

The Constitutional Court's decision of 13 November 2006

... as it was held by the Constitutional Court in its ruling of 28 March 2006, “none of the grounds for the refusal to investigate a petition ... may be interpreted as creating the legal preconditions for a court that considers a case to apply such a law or another legal act (part thereof) the compliance of which with the Constitution (another higher-ranking legal act) is doubtful for the said court”.

Thus, the fact that there are no legal grounds for applying to the Constitutional Court from the aspect pointed out by ... [the petitioner] so that it would once again investigate the compliance of the legal regulation ... with the Constitution, since ... courts already do not have any doubts as regards the constitutionality of the said legal regulation, does not at all mean that [the constitutionality of the said legal regulation] may not be impugned before the Constitutional Court from other aspects, i.e. those aspects from which [this] legal regulation ... is not identical with that ... the compliance of which ... has been investigated at the Constitutional Court ...

The Constitutional Court does not decide issues concerning the compatibility of legal acts of the same legal force

The Constitutional Court's decision of 13 November 2006

Under the Constitution, the Constitutional Court does not decide issues concerning the compatibility of legal acts of the same legal force or concerning competing legal acts of the same legal force (decision of 29 September 1999). If laws contain obscurities, ambiguities, or gaps, the legislature is under the duty to remove them (decision of 23 September 2002).

If the Constitutional Court is requested to solve an issue concerning the compatibility of legal acts of the same legal force or concerning competing legal acts of the same legal force, such a request is not within the jurisdiction of the Constitutional Court. ...

On the other hand, this does not at all mean that, in certain cases, the incompatibility of legal acts (parts thereof) cannot imply the conflict of such legal acts (or some of them) with the Constitution, nor does this mean that, under certain circumstances, the Constitutional Court may not state the existence of such a conflict with the Constitution.

A fictitious petition is not within the jurisdiction of the Constitutional Court

The Constitutional Court's decision of 14 October 2008

In its decision of 31 January 2007, the Constitutional Court held that, in cases where a petition is substantiated not with the reasoning that is explicitly indicated by the petitioner and where such a petition is a fictitious one, in this regard the petition "should be regarded as not falling within the jurisdiction of the Constitutional Court and may not be accepted for consideration at the Constitutional Court".

The Constitutional Court does not assess the compliance of legal acts passed by ministers with the Constitution and laws

The Constitutional Court's ruling of 2 September 2009

According to Article 105 of the Constitution, the Constitutional Court considers and adopts decisions on whether the laws and other acts adopted by the Seimas are in conflict with the Constitution (Paragraph 1) and whether the acts of the President of the Republic and the acts of the Government are in conflict with the Constitution and laws (Paragraph 2).

Assessing the compliance of legal acts passed by ministers ... with the Constitution and/or laws does not fall under the competence of the Constitutional Court.

However, in its decision of 20 September 2005, the Constitutional Court held that, under the Constitution, such legal situations are impermissible where it would not be possible to verify in a court whether legal acts (parts thereof), *inter alia*, legal acts passed by ministers, other lower-ranking legal acts, as well as legal acts issued by municipalities, the control of which as regards their compliance with the Constitution does not fall within the jurisdiction of the Constitutional Court, are in conflict with the Constitution and laws.

In its ruling of 24 October 2007, the Constitutional Court held that, at present, such a legal regulation is established [by means of] laws whereby a decision on the compliance of legal acts passed by other law-making subjects (thus, not those passed by the Seimas, the President of the Republic, or the Government and not those adopted by referendum) with higher-ranking legal acts, *inter alia* (and, first of all), with the Constitution, is assigned to the jurisdiction of administrative courts; if an administrative court rules such a legal act to be in conflict with the Constitution (another higher-ranking legal act), then, under the Constitution and laws, such a decision of the said court has *erga omnes* impact on the whole practice of the application of the respective legal acts (parts thereof).

Thus, assessing the compliance of legal acts passed by ministers with the Constitution and/or laws is within the jurisdiction of a competent administrative court. This court is bound by the doctrinal provisions of the Constitutional Court ...

The Constitutional Court does not decide issues concerning the compatibility of legal acts of the same legal force

The Constitutional Court's decision of 16 November 2010 (petition no 1B-125/2010)

The Constitutional Court has held that, under the Constitution, the Constitutional Court does not consider whether a law is in compliance with another law (rulings of 2 April 2001 and 4 March 2003); it does not decide issues concerning the compatibility of legal acts of the same legal force or concerning competing legal acts of the same legal force (decision of 29 September 1999). If the Constitutional Court is requested to solve an issue concerning the compatibility of legal acts of the same legal force or concerning competing legal acts of the same legal force, such a request is not within the jurisdiction of the Constitutional Court (decision of 6 September 2007).

The Constitutional Court has also held that the removal of collisions is the prerogative of the legislature (ruling of 18 November 1994). If laws contain obscurities, ambiguities, or gaps, the legislature is under the duty to remove them (decisions of 23 September 2002 and 13 November 2006).

The Constitutional Court does not decide issues of the application of law

The Constitutional Court's decision of 16 November 2010 (petition no 1B-125/2010)

Under the Constitution, the Constitutional Court does not decide issues of the application of law; such issues are decided by an institution that has the powers to apply legal acts; if laws contain obscurities, ambiguities, or gaps, the legislature is under the duty to remove them (decisions of 23 September 2002, 13 November 2006, 20 November 2006, and 27 June 2007). The Constitutional Court has also held that such questions of the application of law that have not been decided by the legislature are a matter of judicial practice (ruling of 9 July 1998 and the decision of 20 November 2006); thus, such questions of the application of law that have not been decided by the legislature may be decided by courts when they consider disputes regarding the application of the respective legal acts (parts thereof) (decision of 20 November 2006). Petitions requesting the interpretation as to how the provisions of a law (or another legal act) must be applied do not fall under the jurisdiction of the Constitutional Court (decisions of 23 September 2002 and 20 November 2006).

The Constitutional Court has also held that the interpretation of the essence of a legal norm is the duty of a law-applying state institution (decision of 11 July 1994).

A petition that is an objective in itself must be regarded as not falling under the jurisdiction of the Constitutional Court

The Constitutional Court's decision of 27 August 2013

... A petition for an investigation into the compliance of a legal act with the Constitution where such a petition is an objective in itself should be regarded as not within the jurisdiction of the Constitutional Court.

The Constitutional Court does not investigate the compliance of legal acts adopted by the Government with the provisions of the programme of the Government

The Constitutional Court's ruling of 6 November 2013

... the supervision of the implementation of the programme of the Government is not within the jurisdiction of the Constitutional Court and the compliance of government acts with any programmatic provisions consolidated in the programme of the Government is not a matter of constitutional review.

The Constitutional Court does not investigate the compliance of an international treaty with a law

The Constitutional Court's decision of 4 November 2014

... under the Constitution ... the Constitutional Court presents conclusions on whether the international treaties of the Republic of Lithuania are in conflict with the Constitution. Thus, it should be

held that the issue of the consideration whether an international treaty is in compliance with a law is not within the jurisdiction of the Constitutional Court.

The Constitutional Court does not assess the expediency of the adoption of legal acts

The Constitutional Court's decision (no KT24-S13/2016) of 29 August 2016

... the Constitutional Court does not exercise constitutional control over legal acts from the aspect of the expediency of their adoption ...

The Constitutional Court does not investigate the compliance of a decision entered in the minutes of a meeting of the Government with the Constitution and laws

The Constitutional Court's ruling of 2 March 2018

... under Paragraph 1 of Article 102 and Item 2 of Paragraph 2 of Article 105 of the Constitution, the Constitutional Court decides whether the acts of the Government are in conflict with the Constitution or laws. Therefore, a decision that is entered in the minutes of a meeting of the Government and is not an act of the Government is not, under the Constitution, a matter for investigation by the Constitutional Court.

The Constitutional Court does not decide whether court decisions are in conflict with the Constitution and/or laws and does not have the powers to review cases decided by courts and to overturn (change) court decisions

The Constitutional Court's decision (no KT27-A-S16/2019) of 9 October 2019

Paragraph 4 (wording of 21 March 2019) of Article 106 of the Constitution provides that every person has the right to apply to the Constitutional Court concerning the legal acts specified in Paragraphs 1 and 2 of Article 105 of the Constitution if a decision adopted on the basis of these acts has violated the constitutional rights or freedoms of the person and the person has exhausted all legal remedies.

Thus, under the Constitution, a person has the right to apply to the Constitutional Court regarding the compliance of not all acts with the Constitution and/or laws, but only those specified in Paragraphs 1 and 2 of Article 105 of the Constitution. Paragraph 1 of Article 105 of the Constitution consolidates that the Constitutional Court considers and adopts decisions on whether the laws of the Republic of Lithuania or other acts adopted by the Seimas are in conflict with the Constitution of the Republic of Lithuania; Paragraph 2 of this article establishes that the Constitutional Court also decides whether the acts of the President of the Republic and the acts of the Government of the Republic are in conflict with the Constitution and laws.

In view of this, it should be noted that, under the Constitution, the Constitutional Court does not decide whether court decisions are in conflict with the Constitution and/or laws and it does not have the powers to review cases decided by courts and to overturn (change) court decisions. Such petitions do not fall within the jurisdiction of the Constitutional Court.

The Constitutional Court does not decide, following the petitions of persons referred to in Paragraph 4 (wording of 21 March 2019) of Article 106 of the Constitution, on the compliance of the actions of members of the Seimas, state officials, judges, or state servants with the Constitution and does not assess actions or failure to act by state and municipal institutions or establishments or judicial self-governance institutions

The Constitutional Court's decision (no KT28-A-S17/2019) of 9 October 2019

... the Constitutional Court does not decide, following the petitions of persons referred to in Paragraph 4 (wording of 21 March 2019) of Article 106 of the Constitution, on the compliance of the actions of members of the Seimas, state officials, judges, or state servants with the Constitution and does not assess actions or failure to act by state and municipal institutions or establishments or judicial self-governance institutions. Such petitions do not fall within the jurisdiction of the Constitutional Court.

A petition in which a matter for investigation is absent does not fall within the jurisdiction of the Constitutional Court

The Constitutional Court's decision (no KT28-A-S17/2019) of 9 October 2019

The Constitutional Court has noted on more than one occasion that the fact that a matter for investigation is absent in a petition means that the petition does not fall within the jurisdiction of the Constitutional Court (*inter alia*, the rulings of 20 March 2008, 20 November 2013, 16 December 2013, and 3 July 2014).

The petition of a person referred to in Paragraph 4 (wording of 21 March 2019) of Article 106 of the Constitution should be regarded as not falling within the jurisdiction of the Constitutional Court if the adopted final and non-appealable court decision with respect to this person came into force before 1 May 2019

The Constitutional Court's decision no KT29-A-S18/2019 of 10 October 2019

Under Paragraph 4 (wording of 21 March 2019) of Article 106 of the Constitution, every person has the right to apply to the Constitutional Court concerning the legal acts specified in Paragraphs 1 and 2 of Article 105 of the Constitution if a decision adopted on the basis of these acts has violated the constitutional rights or freedoms of the person and the person has exhausted all legal remedies; the procedure for the implementation of this right is established by the Law on the Constitutional Court of the Republic of Lithuania.

Paragraph 2 of Article 65 (wording of 16 July 2019) of the Law on the Constitutional Court provides that a person has the right to file a petition with the Constitutional Court for an investigation into the compliance of laws or other acts of the Seimas, the acts of the President of the Republic, or the acts of the Government with the Constitution or laws if: (1) a decision adopted on the basis of these acts has violated the constitutional rights or freedoms of the person, and (2) the person has exhausted all remedies provided for by law for defending constitutional rights or freedoms, including the right to apply to a court, and, after all possibilities established by law for filing a complaint against the decision of the court have been exhausted, the final and non-appealable decision is adopted by the court, and (3) not more than four months have passed from the day that the court decision referred to in Item 2 of this paragraph came into force.

... the Law Amending Articles 106 and 107 of the Constitution, which consolidated, in Paragraph 4 of Article 106 of the Constitution, the right of every person to apply to the Constitutional Court, came into force on 1 September 2019.

It should also be noted that the universally recognised general legal principle of *lex retro non agit* is applicable in the field of legal regulation, i.e. the effect of legal acts is prospective and they have no retroactive effect. The Constitutional Court has noted on more than one occasion that this principle is important and necessary in ensuring: the stability and strength of law, laws, and the legal order; the rights of the subjects involved in legal relationships; and trust in legal acts adopted in the state; the said principle is an important precondition for legal certainty and it is an essential element of the rule of law and of a state under the rule of law (*inter alia*, the decision of 25 March 1998, the ruling of 11 January 2001, and the decision of 22 March 2018).

Consequently, under Paragraph 4 of Article 106 of the Constitution, as of 1 September 2019, persons acquired the right to apply to the Constitutional Court in accordance with the procedure laid down in the Law on the Constitutional Court, *inter alia*, within the time limit laid down in Item 3 of Paragraph 2 of Article 65 of this law, i.e. within four months of the date on which the final and non-appealable decision of the court came into force. Thus, the constitutional right to apply to the Constitutional Court concerning the acts specified in Paragraphs 1 and 2 of Article 105 of the Constitution was acquired as of 1 September 2019 only by those persons with respect to whom the final and non-appealable decision of the court in the case concerning the violation of their constitutional rights and freedoms came into force on 1 May 2019 and later.

In view of the above, it should be held that, under the Constitution, the petitions of persons referred to in Paragraph 4 (wording of 21 March 2019) of Article 106 of the Constitution do not fall within the

jurisdiction of the Constitutional Court if the adopted final and non-appealable court decision with respect to these persons came into force before 1 May 2019.

The Constitutional Court does not have the powers to consider petitions requesting the renewal of proceedings before the courts of general competence and administrative courts

The Constitutional Court's decision (no KT45-A-S32/2019) of 12 November 2019

... under the Constitution, the Constitutional Court also does not have the powers to consider petitions requesting the renewal of proceedings before the courts of general competence and administrative courts. Petitions requesting a decision on such issues do not fall within the jurisdiction of the Constitutional Court.

The Constitutional Court does not have the powers to assess the compliance of legal acts issued by ministers and of other lower-ranking acts with the Constitution and/or laws

The Constitutional Court's decision (no KT46-A-S33/2019) of 13 November 2019

As held by the Constitutional Court on more than one occasion, under the Constitution, the Constitutional Court does not have the powers to assess the compliance of legal acts issued by ministers and other lower-ranking acts with the Constitution and/or laws (decisions of 9 November 1999 and 20 September 2005) Petitions requesting a decision on such issues do not fall within the jurisdiction of the Constitutional Court.

The Constitutional Court does not have the powers to investigate the compliance of a factual situation with the Constitution

The Constitutional Court's decision (no KT50-A-S37/2019) of 20 November 2019

As noted by the Constitutional Court, under Paragraph 1 of Article 102 and Article 105 of the Constitution, the Constitutional Court does not have the powers to investigate the compliance of a factual situation with the Constitution. The Constitutional Court administers constitutional justice by investigating whether laws and other acts of the Seimas, the acts of the President of the Republic, and the acts of the Government are in conflict with the Constitution (decision of 20 October 2017).

The Constitutional Court does not have the powers to deal with matters assigned to the competence of other institutions

The Constitutional Court's decision (no KT51-A-S38/2019) of 20 November 2019

... under the Constitution, the Constitutional Court does not have the powers to deal with matters assigned to the competence of other institutions. Petitions requesting a decision on such issues do not fall within the jurisdiction of the Constitutional Court.

The Constitutional Court does not have the powers to assess the compliance of acts adopted by institutions other than the Seimas, the President of the Republic, or the Government with the Constitution and/or laws

The Constitutional Court's decision (no KT61-A-S47/2019) of 11 December 2019

... under the Constitution, the assessment of the compliance of acts adopted by institutions other than the Seimas, the President of the Republic, or the Government with the Constitution and/or laws is not assigned to the competence of the Constitutional Court. ... Petitions requesting a decision on such issues do not fall within the jurisdiction of the Constitutional Court.

Petitions requesting an investigation into the compliance of certain provisions of the Constitution with other provisions of the Constitution do not fall within the jurisdiction of the Constitutional Court

The Constitutional Court's decision (no KT63-A-S58/2020) of 1 April 2020

As held by the Constitutional Court, the provisions of the Constitution form a single coherent system; no provision of the Constitution may be opposed to other provisions of the Constitution; the nature of the Constitution as the highest-ranking legal act and the idea of constitutionality imply that the Constitution may not and does not contain any gaps or internal contradictions (rulings of 25 May 2004, 13 December 2004, and 24 January 2014).

Consequently, the petitions in which petitioners raise doubts concerning the conflict of certain provisions of the Constitution with other provisions of the Constitution may not be investigated.

In view of the above, it should be held that there is no matter for investigation in this part of the petition of the petitioner. The Constitutional Court has noted more than once that the fact that a matter for investigation is absent in a petition means that the petition does not fall within the jurisdiction of the Constitutional Court (*inter alia*, the decision (no KT28-A-S17/2019) of 9 October 2019 and the decision (no KT55-A-S50/2020) of 25 March 2020).

Petitions requesting an investigation into the compliance of the laws and other legal acts of the Republic of Lithuania with the norms of European Union law do not fall within the jurisdiction of the Constitutional Court

The Constitutional Court's decision (no KT70-A-S65/2020) of 8 April 2020

... Article 2 of the Constitutional Act on Membership of the Republic of Lithuania in the European Union provides that the norms of European Union law are a constituent part of the legal system of the Republic of Lithuania. Where it concerns the founding Treaties of the European Union, the norms of European Union law are applied directly, while in the event of the collision of legal norms, they have supremacy over the laws and other legal acts of the Republic of Lithuania.

The Constitutional Court has held that the Constitution *expressis verbis* establishes the rule of collision with respect to EU law, by consolidating the priority of the application of EU legal acts in cases where the provisions of EU law arising from the founding Treaties of the European Union compete with the legal regulation established in Lithuanian national legal acts (regardless of their legal force), with the exception of the Constitution itself (*inter alia*, the ruling of 14 March 2006, the decision of 8 May 2007, and the ruling of 4 December 2008).

In view of the above, it should be held that collision between the laws and other legal acts of the Republic of Lithuania and the norms of EU law is an issue of the application of law.

The Constitutional Court has held on more than one occasion that, under the Constitution, it does not decide questions on the application of law (*inter alia*, the decisions of 20 November 2006 and 9 May 2016 and the decision (no KT61-A-S56/2020) of 1 April 2020). Petitions requesting a decision on such issues do not fall within the jurisdiction of the Constitutional Court.

In implementing the constitutional right to apply to the Constitutional Court, a person must act in good faith and must not abuse this right

The Constitutional Court's decision (no KT83-A-S78/2020) of 29 April 2020

In its ruling of 25 November 2019, the Constitutional Court noted that, as of 1 September 2019, the Law Amending Articles 106 and 107 of the Constitution consolidated the institution of individual constitutional complaints in the Constitution: in defence of constitutional rights or freedoms, every person has the right to apply to the Constitutional Court requesting it to investigate whether legal acts whose review falls within the competence of the Constitutional Court are in compliance with the Constitution (another higher-ranking act) if a decision adopted on the basis of these legal acts has possibly violated the

constitutional rights or freedoms of the person; the institution of individual constitutional complaints in the Constitution is not an objective in itself; it is aimed at enabling the effective protection of those constitutional rights or freedoms of a person that could be violated by a decision adopted on the basis of legal acts (parts thereof) contrary to the Constitution.

The Constitutional Court has also held that, under the Constitution, the subjects involved in legal relationships are under the duty to act in good faith and without violating law; this is required by the general legal principle of *bona fides*, which is inseparable from the constitutional principle of a state under the rule of law (*inter alia*, the rulings of 27 June 2007, 11 December 2013, and 6 February 2020); persons who believe that their constitutional rights or freedoms have been violated not only have the right to defend them but, having decided to exercise this right, have the duty to do so in good faith (decision (no KT17-A-S17/2020) of 5 February 2020 and decisions (nos KT66-A-S61/2020 and KT69-A-S64/2020) of 8 April 2020).

Consequently, the Constitution requires that every person, when implementing the constitutional right to apply to the Constitutional Court for an investigation into whether legal acts whose review falls within the competence of the Constitutional Court are in compliance with the Constitution (another higher-ranking act) if a decision adopted on the basis of these legal acts has possibly violated the constitutional rights or freedoms of the person, must act in good faith and must not abuse the constitutional right to apply to the Constitutional Court.

The abuse of procedural rights

The Constitutional Court's decision (no KT83-A-S78/2020) of 29 April 2020

... the conduct of petitioners in cases where, while being obliged to be aware of the obvious inadmissibility of their petition (petitions) and the pointlessness of the consideration of their petition (petitions) at the Constitutional Court, they apply to the Constitutional Court with such a petition (petitions) is incompatible with the exercise of their constitutional right to apply to the Constitutional Court in good faith, nor with the aims of the administration of constitutional justice; therefore, such implementation of the constitutional right to apply to the Constitutional Court not according to the intended purpose should be considered to be the abuse of procedural rights, which is prohibited under the Constitution.

Petitions containing requests for legal advice do not fall within the jurisdiction of the Constitutional Court

The Constitutional Court's decision (no KT85-A-S80/2020) of 29 April 2020

... as the Constitutional Court has held on more than one occasion, under the Law on the Constitutional Court, the Constitutional Court gives legal advice neither to the persons that participated in the case nor to any other persons (*inter alia*, the decisions of 6 April 2004, 27 August 2014, 13 January 2016, and 5 September 2019). Such petitions requesting legal advice do not fall within the jurisdiction of the Constitutional Court.

Persons referred to in Paragraph 4 (wording of 21 March 2019) of Article 106 of the Constitution do not have the right to apply to the Constitutional Court with petitions containing general requests

The Constitutional Court's decision (no KT116-A-S108/2020) of 2 July 2020

... under the Constitution, persons referred to in Paragraph 4 (wording of 21 March 2019) of Article 106 thereof do not have the right to apply to the Constitutional Court with petitions containing general requests to investigate the constitutionality of legal acts whose review falls within the competence of the Constitutional Court (decision (no KT19-A-S19/2020) of 5 February 2020 and the decision (no KT84-A-S79/2020) of 29 April 2020).

Petitions whereby the right to apply to the Constitutional Court is abused do not fall within the jurisdiction of the Constitutional Court

The Constitutional Court's decision (no KT132-A-S123/2020) of 23 July 2020

... a petition whereby the right of a person to apply to the Constitutional Court is abused does not fall within the jurisdiction of the Constitutional Court.

8.5. ACTS ADOPTED BY THE CONSTITUTIONAL COURT

8.5.1. The concept and types of final acts adopted by the Constitutional Court

The concept of final acts adopted by the Constitutional Court (Paragraph 2 of Article 107 of the Constitution)

The Constitutional Court's ruling of 28 March 2006

Paragraph 2 of Article 107 of the Constitution provides that the decisions of the Constitutional Court on the issues assigned to its competence by the Constitution are final and not subject to appeal.

The notion “decisions” used in Paragraph 2 of Article 107 of the Constitution (the same notion is used in Paragraph 1 of Article 105, Paragraph 2 of Article 107, and Paragraph 4 of Article 109 of the Constitution) must not be interpreted as meaning that the Constitutional Court, while deciding on the issues assigned to its competence, may adopt only a legal act called a decision (which has the form of a decision). The notion “decisions” is a general one; this notion not only describes legal acts adopted by the Constitutional Court and the types of these acts, but also means that the Constitutional Court implements the competence assigned to it by the Constitution and expresses its will, i.e. adopts a final act of the Constitutional Court.

It needs to be noted that final acts adopted by the Constitutional Court are also such its legal acts by which a constitutional justice case is considered on the merits, as well as such that are adopted without investigating on the merits the compliance of an impugned legal act (part thereof) with the Constitution (another higher-ranking legal act), but by properly (clearly and rationally) refusing by means of a reasoned decision to consider a petition or by dismissing instituted legal proceedings (if the respective petition is received at the Constitutional Court and the preparation of a constitutional justice case for a hearing at the Constitutional Court has begun) or by dismissing a case (if the respective constitutional justice case has already been considered in a hearing at the Constitutional Court).

The general notion “decisions” of Paragraph 2 of Article 107 of the Constitution is concretised in the Law on the Constitutional Court.

... the Law on the Constitutional Court, *inter alia*, prescribes: the Constitutional Court decides cases on their merits by issuing rulings ... the rulings of the Constitutional Court are pronounced in the name of the Republic of Lithuania ... in the cases provided for by the Law on the Constitutional Court (i.e. the cases provided for in Paragraph 3 of Article 105 of the Constitution), a final act adopted by the Constitutional Court is called a conclusion ... the Constitutional Court adopts decisions on individual questions that prevent a case from being decided on its merits Thus, after it investigates whether a certain act of the Seimas, the President of the Republic, or the Government or any act (part thereof) passed by referendum is in conflict with a higher-ranking legal act, *inter alia* (and, first of all), with the Constitution, the Constitutional Court adopts a ruling.

In this context, it should be noted that, under the Law on the Constitutional Court, the Constitutional Court adopts decisions regarding the interpretation of a ruling of the Constitutional Court ... and regarding the dismissal of a case (legal proceedings) ...

The specified rulings, conclusions, and decisions of the Constitutional Court are final acts of the Constitutional Court – by means of such acts, a constitutional justice case is completed. All the said rulings, conclusions, and decisions of the Constitutional Court by which a constitutional justice case is completed, i.e. all final acts of the Constitutional Court, are included in the general notion “decisions” used in Paragraph 2 of Article 107 of the Constitution, which also means that the Constitutional Court implements

the competence assigned to it by the Constitution and expresses its will, i.e. adopts a final act of the Constitutional Court.

8.5.2. The legal force of acts adopted by the Constitutional Court

The legal force of acts adopted by the Constitutional Court (Paragraphs 1 and 2 of Article 107 of the Constitution)

The Constitutional Court's ruling of 30 May 2003

Paragraphs 1 and 2 of Article 107 of the Constitution prescribe:

“A law (or part thereof) of the Republic of Lithuania or another act (or part thereof) of the Seimas, an act of the President of the Republic, or an act (or part thereof) of the Government may not be applied from the day of the official publication of the decision of the Constitutional Court that the act in question (or part thereof) is in conflict with the Constitution of the Republic of Lithuania.

The decisions of the Constitutional Court on the issues assigned to its competence by the Constitution shall be final and not subject to appeal.”

Thus, under the Constitution, after the Constitutional Court recognises a law (part thereof), or another act (part thereof) of the Seimas, an act of the President of the Republic, an act (part thereof) of the Government to be in conflict with the Constitution, the institutions that issued the respective act – the Seimas, the President of the Republic, or the Government – are prohibited from repeatedly establishing any such a legal regulation that has been recognised to be in conflict with the Constitution, by adopting certain laws or other legal acts afterwards. The legal regulation established in Paragraphs 1 and 2 of Article 107 of the Constitution also means that the legal force of a decision (ruling) of the Constitutional Court may not be overcome by means of the repeated adoption of laws or other acts of the Seimas, acts of the President of the Republic, or acts of the Government.

[...]

In view of the fact that all constituent parts of a ruling of the Constitutional Court are interrelated and constitute a single whole, that a ruling of the Constitutional Court must state the arguments upon which that ruling of the Constitutional Court is based and present the concept of the provisions of the Constitution, the institutions that adopt laws and other legal acts – the Seimas, the President of the Republic, and the Government – while adopting new laws or legal acts, amending and supplementing already adopted laws or other legal acts, are bound by the concept of the provisions of the Constitution and other legal arguments that are presented in the reasoning of that ruling of the Constitutional Court.

The legal force of rulings adopted by the Constitutional Court (Paragraph 1 of Article 107 of the Constitution)

The Constitutional Court's ruling of 30 December 2003

The provision of Paragraph 1 of Article 107 of the Constitution, whereby a legal act (or part thereof) may not be applied from the day of the official publication of the decision of the Constitutional Court that the act in question (or part thereof) is in conflict with the Constitution, means that, as long as the Constitutional Court has not adopted a decision that the act in question (or part thereof) is in conflict with the Constitution, it is presumed that such a legal act (part thereof) is in compliance with the Constitution and that the legal effects that have emerged on the basis of the act in question (part thereof) are legitimate.

Thus, the general rule has been established in Paragraph 1 of Article 107 of the Constitution that the legal force of decisions adopted by the Constitutional Court is prospective. However, this rule is not absolute.

The legal force of a conclusion presented by the Constitutional Court (Item 4 of Paragraph 3 of Article 105 and Paragraphs 2 and 3 of Article 107 of the Constitution)

The Constitutional Court's conclusion of 31 March 2004

Under Item 4 of Paragraph 3 of Article 105 of the Constitution, the Constitutional Court presents a conclusion on whether the concrete actions of the President of the Republic against whom an impeachment case has been instituted are in conflict with the Constitution. Paragraph 2 of Article 107 of the Constitution provides that the decisions of the Constitutional Court on the issues assigned to its competence by the Constitution are final and not subject to appeal. The presentation of the conclusion specified in Item 4 of Paragraph 3 of Article 105 of the Constitution is one of such issues that, under the Constitution, fall under the competence of the Constitutional Court only. Thus, under the Constitution, a conclusion on whether the concrete actions of the President of the Republic against whom an impeachment case has been instituted are in conflict with the Constitution is final and not subject to appeal.

[...]

The provision of Paragraph 3 of Article 107 of the Constitution that, on the basis of the conclusions of the Constitutional Court, the Seimas takes a final decision on the issues set forth in Paragraph 3 of Article 105 of the Constitution, means that, in cases where impeachment proceedings are instituted against the President of the Republic for a gross violation of the Constitution, the Seimas has the duty to apply to the Constitutional Court and to request a conclusion on whether the actions of the President of the Republic are in conflict with the Constitution. ...

The provision of Paragraph 2 of Article 107 of the Constitution, whereby the decisions of the Constitutional Court on the issues assigned to its competence by the Constitution are final and not subject to appeal, also means that, when deciding whether or not to remove the President of the Republic from office, the Seimas may not reject, question, or change the conclusion of the Constitutional Court that the concrete actions of the President of the Republic are (or are not) in conflict with the Constitution. No such powers are assigned to the Seimas by the Constitution. The conclusion of the Constitutional Court that the concrete actions of the President of the Republic are in conflict (or are not in conflict) with the Constitution is binding on the Seimas insofar as the Constitution does not empower it to decide whether the conclusion of the Constitutional Court is well founded and legal – it is only the Constitutional Court that may establish the legal fact that the actions of the President of the Republic are (or are not) in conflict with the Constitution.

[...]

It should be noted that the constitutional provision whereby only the Constitutional Court has the powers to decide (through its conclusions on the matter) whether the concrete actions of the President of the Republic are in conflict with the Constitution consolidates the guarantee for the President of the Republic that he/she will not be held constitutionally liable unreasonably. Thus, if the Constitutional Court reaches the conclusion that the actions of the President of the Republic are not in conflict with the Constitution, the Seimas may not remove the President of the Republic from office for a gross violation of the Constitution.

[...]

... If the grounds for impeachment are a gross violation of the Constitution, the Seimas may decide the issue of the removal of the President of the Republic from office only after receiving the conclusion of the Constitutional Court that the President of the Republic grossly violated the Constitution. This is the constitutional guarantee for the President of the Republic that constitutional responsibility will not be applied against him/her unreasonably.

The legal force of a conclusion presented by the Constitutional Court

The Constitutional Court's ruling of 25 May 2004

... the conclusion of the Constitutional Court that a person has grossly violated the Constitution (and, thus, has breached the oath) is final. No other state institution, no other state official, and no other subject may change or revoke such a conclusion of the Constitutional Court. Under the Constitution, such a conclusion may not be changed or revoked by referendum, by election, or in any other way.

The legal force of acts adopted by the Constitutional Court (Paragraph 2 of Article 107 of the Constitution)

The Constitutional Court's decision of 20 September 2005

Paragraph 2 of Article 107 of the Constitution provides that the decisions of the Constitutional Court on the issues assigned to its competence by the Constitution are final and not subject to appeal.

[...]

The provisions of the Constitution – its norms and principles – are interpreted in the acts of the Constitutional Court. The official constitutional doctrine is created and developed in such acts. All law-making subjects and all law-applying subjects, including courts, must pay regard to the official constitutional doctrine when they apply the Constitution; they may not interpret the provisions of the Constitution differently from how the Constitutional Court interpreted the said provisions in its acts. Otherwise, the constitutional principle that only the Constitutional Court enjoys the powers to officially interpret the Constitution would be violated, the supremacy of the Constitution would be disregarded, and the preconditions would be created for the emergence of incompatibilities in the legal system.

Every ruling of the Constitutional Court constitutes a single whole, and all its constituent parts are interrelated; while adopting new laws or legal acts, amending and supplementing already adopted laws or other legal acts, state institutions that pass such acts are bound both by the concept of the provisions of the Constitution and by other legal arguments that are presented in the reasoning of the respective ruling adopted by the Constitutional Court (rulings of 30 May 2003 and 19 January 2005).

It needs to be emphasised that law-making institutions (officials) and law-applying institutions (officials) are bound by the concept of constitutional provisions and by arguments set out not only in the rulings of the Constitutional Court, but also in other acts of the Constitutional Court, i.e. its conclusions and decisions. Thus, under the Constitution, the content of all acts of the Constitutional Court in which the Constitution is interpreted, i.e. the official constitutional doctrine is formulated, is also binding on law-making institutions (officials) and law-applying institutions, including courts of general jurisdiction and specialised courts.

The *erga omnes* model of constitutional control

The Constitutional Court's ruling of 28 March 2006

Paragraph 1 of Article 107 of the Constitution provides that a law (or part thereof) or another act (or part thereof) of the Seimas, an act of the President of the Republic, or an act (or part thereof) of the Government may not be applied from the day of the official publication of the decision of the Constitutional Court that the act in question (or part thereof) is in conflict with the Constitution. Thus, the *erga omnes* model of constitutional control is consolidated in the Constitution.

The legal force of acts adopted by the Constitutional Court (Paragraphs 1 and 2 of Article 107 of the Constitution)

The Constitutional Court's ruling of 28 March 2006

... the phrase “shall be final and not subject to appeal” of Paragraph 2 of Article 107 of the Constitution, which ... prescribes that the decisions of the Constitutional Court on the issues assigned to its competence by the Constitution are final and not subject to appeal, means that rulings, conclusions, or decisions of the Constitutional Court by which a constitutional justice case is completed, i.e. final acts of the Constitutional Court, are obligatory for all state institutions, courts, all enterprises, establishments, and organisations, as well as officials and citizens, including the Constitutional Court itself: final acts of the Constitutional Court are obligatory for the Constitutional Court itself and they restrict the Constitutional Court from the aspect that it may not change them or review them if there are no constitutional grounds for doing so.

[...]

No amendments or supplements to a higher-ranking legal act (including the Constitution) made after the Constitutional Court declared, when referring to the previous provisions of the Constitution, a certain legal act (part thereof) passed by the Seimas, the President of the Republic, or the Government, or adopted by referendum to be in conflict with a certain higher-ranking legal act, *inter alia* (and, first of all), with the Constitution, may reinstate the legal act (part thereof) that was declared to be in conflict with a certain higher-ranking legal act, *inter alia* (and, first of all), with the Constitution, in the Lithuanian legal system. Under the Constitution, the Constitutional Court does not have the powers to reinstate such legal acts (parts thereof) in the Lithuanian legal system, either. ...

[...]

... the Constitution does not give any grounds for reinstating retroactively a legal act (part thereof) that has been declared in conflict with a certain higher-ranking legal regulation, *inter alia* (and, first of all), with one established in the Constitution, in the Lithuanian legal system, or for questioning and annulling the respective rulings, conclusions, or decisions of the Constitutional Court that were constitutionally justifiable at the moment when they were adopted. A different interpretation would result in the disregard of not only the provisions of the Constitution that consolidate the institution of constitutional justice – constitutional judicial control – *inter alia*, the fact that the decisions of the Constitutional Court are final and not subject to appeal, but also would lead to the denial of the stability of the Constitution, the predictability of decisions adopted by the Constitutional Court, and the legitimate expectations of various legal subjects where the said expectations are created by the aforementioned decisions.

The legal position of the Constitutional Court has the power of precedent

The Constitutional Court's ruling of 22 October 2007

... the legal position (*ratio decidendi*) of the Constitutional Court has the power of precedent in the respective constitutional justice cases.

The legal force of rulings adopted by the Constitutional Court; the duty of law-making subjects to modify a legal regulation declared to be in conflict with a higher-ranking legal act (Article 107 of the Constitution)

The Constitutional Court's decision of 1 February 2008

Paragraph 1 of Article 107 of the Constitution provides that a law (or part thereof) of the Republic of Lithuania or another act (or part thereof) of the Seimas, an act of the President of the Republic, or an act (or part thereof) of the Government may not be applied from the day of the official publication of the decision of the Constitutional Court that the act in question (or part thereof) is in conflict with the Constitution (Paragraph 1); the decisions of the Constitutional Court on the issues assigned to its competence by the Constitution are final and not subject to appeal (Paragraph 2). Thus, every legal act (or part thereof) passed by the Seimas, the President of the Republic, or the Government, or adopted by referendum, which is declared in conflict with any higher-ranking legal act, *inter alia* (and, first of all), with the Constitution, is removed from the Lithuanian legal system for good, as it may never be applied anymore (rulings of 28 March 2006 and 6 June 2006 and the decision of 8 August 2006); thus, the respective law-making subject – the Seimas, the President of the Republic, or the Government – is under the constitutional duty to recognise such a legal act (part thereof) no longer valid or, if it is impossible to do without the respective legal regulation of the social relationships in question, to amend it so that the newly established legal regulation would not be in conflict with higher-ranking legal acts, *inter alia* (and, first of all), the Constitution; but even until this constitutional duty is carried out, the respective legal act (part thereof) may not be applied under any circumstances; in this respect, the legal force of such a legal act is abolished (decision of 8 August 2006).

When new laws are adopted, amended and/or already adopted laws and legal acts are supplemented (also when new legal regulation is established in order to meet the requirements of the Constitution, or when the existing legal regulation is modified in order to harmonise it with the Constitution), all law-making subjects are bound by the jurisprudence of the Constitutional Court, *inter alia*, by the official

constitutional doctrine formed therein (in the reasoning parts of acts adopted by the Constitutional Court), i.e. by the official concept (official interpretation) of provisions (norms and principles) of the Constitution, as well as by other legal arguments set out in acts adopted the Constitutional Court (ruling of 30 May 2003, the decision of 20 September 2005, the rulings of 14 March 2006, 28 March 2006, 9 May 2006, and 6 June 2006 and the decision of 8 August 2006). Such legal acts passed by the Seimas, the President of the Republic, or the Government or those adopted by referendum that establish a new (different) legal regulation instead of the legal regulation ruled by the Constitutional Court to be in conflict with the Constitution or that declare legal acts (parts thereof) that are in conflict with the Constitution to be no longer valid may be challenged at the Constitutional Court in accordance with the established procedure (decision of 8 August 2006).

After the entry into effect of a ruling of the Constitutional Court that has declared a legal act (part thereof) to be in conflict with the Constitution, there might appear various indeterminacies in the legal system, *lacunae legis* – gaps in the legal regulation, or even a vacuum; in order to avoid this, the legal regulation should be modified in such a manner that gaps in the legal regulation and other indeterminacies would be removed and that the legal regulation would be clear and harmonious (rulings of 19 January 2005 and 23 August 2005 and the decision of 8 August 2006). The Constitution does not tolerate any such a situation where the respective law-making subject avoids or delays the adoption of such legal acts that, while following the official concept of the provisions of the Constitution – the official constitutional doctrine set out in rulings of the Constitutional Court, would modify, as appropriate, the legal regulation that has been ruled to be, by means of a ruling of the Constitutional Court, in conflict with higher-ranking legal acts, *inter alia* (and, first of all), with the Constitution; such a situation should especially not be tolerated when a *lacuna legis*, a legal gap, appears in the legal system after the entry into force of a ruling of the Constitutional Court that has ruled a certain legal act (part thereof) in conflict with the Constitution (or another higher-ranking legal act), i.e. when certain social relationships remain legally unregulated, even though, while paying regard to the imperatives of the consistency and inner uniformity of the legal system, which stem from the Constitution, and taking account of the content of these social relationships, the said relationships must be legally regulated (decision of 8 August 2006).

In this context, it needs to be mentioned that legal gaps (including legislative omissions) that are in lower-ranking legal acts may be filled ad hoc when courts within their competence decide cases on an individual social relationship and when they apply (and interpret) law. Therefore, in cases where, instead of the legal regulation that was declared by the Constitutional Court in conflict with a higher-ranking legal act, *inter alia*, with the Constitution, the respective law-making subject has not passed a legal act (acts) (parts thereof) that would establish a new (different) legal regulation harmonised with the said higher-ranking legal acts, *inter alia*, with the Constitution, courts have the constitutional duty to ensure the rights and freedoms of a person who applies to a court regarding the violation of his/her rights or freedoms, and they must ensure other constitutional values; thus, courts have the powers, which stem from the Constitution, to apply, *inter alia*, the general principles of law, as well as higher-ranking legal acts, and, first of all, the Constitution – supreme law. However, it needs to be emphasised that, when courts exercise these constitutional powers, legal gaps are not removed for good – they are only filled ad hoc; still, this permits the ensuring of the protection of the rights and freedoms of a person who applies to a court regarding the defence of his/her violated rights precisely in that individual social relationship due to which a case is considered in that court (decision of 8 August 2006 and the ruling of 7 June 2007).

The Constitutional Court is bound both by the precedents that it itself has created and by the official constitutional doctrine that substantiates such precedents

The Constitutional Court's ruling of 20 February 2008

It has been held on more than one occasion in acts adopted by the Constitutional Court that the Constitutional Court is bound by precedents that it itself has created (in previous constitutional justice cases) and by the official constitutional doctrine that it itself has formed, which substantiates these precedents; it may be possible to deviate from precedents created by the Constitutional Court while

adopting decisions in constitutional justice cases and new precedents may be created only in cases where this is unavoidably and objectively necessary, constitutionally justifiable and reasoned; equally, the official constitutional doctrinal provisions on which precedents of the Constitutional Court are based may not be reinterpreted so that the official constitutional doctrine would be modified unless this is unavoidably and objectively necessary, constitutionally justifiable and reasoned (ruling of 28 March 2006, the decisions of 8 August 2006 and 21 November 2006, the rulings of 22 October 2007 and 24 October 2007, and the decisions of 13 November 2007, 6 December 2007, and 1 February 2008).

The legal meaning of factual circumstances established by the Constitutional Court

The Constitutional Court's ruling of 9 February 2010

Factual circumstances established by the Constitutional Court in previous cases are *res iudicata*; such factual circumstances are not established and proved once again in new cases (conclusion of 31 March 2004).

The right of the legislature to lay down such a legal regulation that would remove negative legal consequences that arose as a result of the application of a legal act declared to be in conflict with the Constitution

The Constitutional Court's ruling of 25 October 2011

In its decision of 13 May 2003, after holding that, under Paragraph 1 of Article 107 of the Constitution, the force of decisions of the Constitutional Court regarding the compliance of legal acts with the Constitution is prospective, the Constitutional Court also noted that, under the Constitution, this does not mean that the legislature may not, on the whole, regulate the relationships occurring prior to the day of the official publication of a decision of the Constitutional Court whereby a law is ruled to be in conflict with the Constitution.

In its ruling of 25 October 2011, the Constitutional Court noted that the Constitution, *inter alia*, the provision of Paragraph 1 of Article 107 thereof, whereby, *inter alia*, an act (or part thereof) of the Seimas may not be applied from the day of the official publication of the decision of the Constitutional Court that the act in question (or part thereof) is in conflict with the Constitution, does not deny the right of the Seimas to establish such a new legal regulation that would remove negative legal consequences that arise in the course of the application of a legal act (part thereof) that is later declared by the Constitutional Court, by means of its decision, to be in conflict with the Constitution, i.e. also to apply the new legal regulation to relationships that occurred prior to the day when the said decision of the Constitutional Court was officially published. The said legal regulation must pay regard to the Constitution; it may not violate the public interest and must fulfil, *inter alia*, the requirements of the constitutional principle of a state under the rule of law: it may not create any preconditions for denying justice, legal certainty, and legal security, and it must protect any honestly acquired rights of other persons.

The legal force of rulings adopted by the Constitutional Court (Paragraphs 1 and 2 of Article 107 of the Constitution)

The Constitutional Court's decision of 19 November 2012

In its jurisprudence, the Constitutional Court has interpreted the provisions of Article 107 of the Constitution more than once.

Paragraphs 1 and 2 of Article 107 of the Constitution prescribe:

“A law (or part thereof) of the Republic of Lithuania or another act (or part thereof) of the Seimas, an act of the President of the Republic, or an act (or part thereof) of the Government may not be applied from the day of the official publication of the decision of the Constitutional Court that the act in question (or part thereof) is in conflict with the Constitution of the Republic of Lithuania.

The decisions of the Constitutional Court on the issues assigned to its competence by the Constitution shall be final and not subject to appeal.”

The Constitutional Court has held on more than one occasion that Paragraph 1 of Article 107 of the Constitution should be interpreted as meaning that every legal act (or part thereof) passed by the Seimas, the President of the Republic, or the Government or adopted by referendum that is declared to be in conflict with any higher-ranking legal act, *inter alia* (and, first of all), with the Constitution, is removed from the Lithuanian legal system for good, as it may never be applied anymore (*inter alia*, the rulings of 28 March 2006, 6 June 2006, 25 October 2011, and 6 February 2012). The Constitutional Court has also held that, while deciding constitutional justice cases subsequent to petitions of petitioners, it has the constitutional powers to annul the legal force of legal acts (parts thereof) if they are in conflict with higher-ranking legal acts, *inter alia* (and, first of all), with the Constitution (ruling of 6 June 2006, the decision of 3 May 2010, and the ruling of 25 October 2011).

While interpreting Paragraph 1 of Article 107 of the Constitution, the Constitutional Court has also revealed the content (which arises from the said paragraph) of the presumption of the constitutionality of legal acts and their consequences: the provision of Paragraph 1 of Article 107 of the Constitution, whereby a legal act (or part thereof) may not be applied from the day of the official publication of the decision of the Constitutional Court that the act in question (or part thereof) is in conflict with the Constitution, means that, as long as the Constitutional Court has not adopted the decision that the act in question (or part thereof) is in conflict with the Constitution, it is presumed that such a legal act (part thereof) is in compliance with the Constitution and that legal consequences that arose on the basis of the act in question (part thereof) are legitimate (rulings of 30 December 2003, 22 December 2010, and 25 October 2011).

In its ruling of 30 December 2003, the Constitutional Court held that Paragraph 1 of Article 107 of the Constitution consolidates the general rule that the force of decisions of the Constitutional Court is prospective; however, this rule is not absolute.

Thus, there may be constitutionally justifiable exceptions to the general rule that the force of decisions of the Constitutional Court is prospective, i.e. under the Constitution, in exceptional cases, the force of decisions of the Constitutional Court may also be targeted at the consequences of the application of a legal act declared in conflict with the Constitution where such consequences had arisen before the Constitutional Court adopted the decision that this legal act (part thereof) is in conflict with the Constitution.

It needs to be noted that the exceptions to the general rule established in Paragraph 1 of Article 107 of the Constitution that the legal force of decisions of the Constitutional Court is prospective may be justified by referring to the overall constitutional legal regulation.

The Constitution is an integral act (Paragraph 1 of Article 6 of the Constitution). The Constitutional Court has held more than once that the principles and norms of the Constitution constitute a harmonious system, and that it is not allowed to interpret any provision of the Constitution in a manner that would distort or deny the content of any other constitutional provision, since thus the essence of the entire constitutional regulation would be distorted and the balance of the constitutional values would be disturbed. While invoking such a concept of the provision of Paragraph 1 of Article 6 of the Constitution, in its ruling of 30 December 2003, the Constitutional Court emphasised that, when interpreting the content of Paragraph 1 of Article 107 of the Constitution, account should be taken of other provisions of the Constitution, *inter alia*, of Paragraph 1 of Article 7 of the Constitution, Article 110 of the Constitution, as well as of the constitutional principle of a state under the rule of law. It needs to be noted that the content of Paragraph 1 of Article 107 of the Constitution should also be interpreted in the context of the provisions of Paragraph 2 of this article, as well as those of Articles 1, 5, 6, 18, and 30, and Paragraph 1 of Article 102 of the Constitution.

[...]

... while taking account of the overall constitutional legal regulation consolidating the supremacy of the Constitution, it needs to be held that the retroactive applicability of the decision of the Constitutional Court that a legal act (part thereof) is in conflict with the Constitution may be constitutionally justifiable in such exceptional cases where, without applying an exception to the general rule established in Paragraph 1 of Article 107 of the Constitution that the legal force of decisions adopted by the Constitutional Court is prospective, the principle of the supremacy of the Constitution and the related constitutional imperative of

the rule of law would be denied and the requirements of administering constitutional justice would, thus, be violated.

The powers of the Constitutional Court, upon establishing that a legal act denies, in essence, the fundamental constitutional values – the independence of the State of Lithuania, democracy, and the republic, or the innate nature of human rights and freedoms, to declare anticonstitutional the consequences of the application of such a legal act (Articles 1 and 18, Paragraph 1 of Article 102, and Paragraph 2 of Article 107 of the Constitution)

The Constitutional Court's decision of 19 November 2012

The fact that independence, democracy, and the republic, as well as the innate nature of human rights and freedoms, are fundamental constitutional values that constitute the foundation of the State of Lithuania as the common good of all society, as well as the fact that these values may not be denied, implies that legal acts (parts thereof) whereby the values of the State of Lithuania – its independence, democracy, and the republic, or the innate nature of human rights and freedoms – would be essentially denied may not be effective as from the day of their adoption and the consequences of the application of such legal acts (parts thereof) must be considered anticonstitutional. A different interpretation of Articles 1 and 18 of the Constitution would mean that not only the principle of the supremacy of the Constitution and the constitutional imperative of the rule of law would be denied, but also the preconditions would be created for losing the independence of the state, disrupting democracy, or abolishing the republic, for denying the innate nature of human rights and freedoms, i.e. for ruining the foundation of the State of Lithuania as the common good of all society, which is consolidated in the Constitution.

Taking account of that, the conclusion should be drawn that the provisions of Paragraph 1 of Article 102 and Paragraph 2 of Article 107 of the Constitution, interpreted in the context of the fundamental constitutional values consolidated in Articles 1 and 18 of the Constitution and in the context of the principle of the supremacy of the Constitution and the constitutional imperative of the rule of law, *inter alia*, give rise to the powers of the Constitutional Court as the institution administering constitutional justice and guaranteeing constitutional lawfulness and the supremacy of the Constitution in the legal system, upon establishing in a constitutional justice case that an impugned legal act (part thereof) is not only in conflict with the Constitution, but also denies, in essence, the fundamental constitutional values – the independence of the State of Lithuania, democracy, and the republic, or the innate nature of human rights and freedoms, to declare anticonstitutional the consequences of the application of such a legal act (part thereof).

The constitutional prohibition on overruling the legal force of a final act adopted by the Constitutional Court; the powers of the Constitutional Court to declare anticonstitutional the consequences of the application of a legal act that violates this prohibition (Paragraph 1 of Article 102 and Paragraphs 1 and 2 of Article 107 of the Constitution)

The Constitutional Court's decision of 19 November 2012

While interpreting the constitutional legal regulation established in Paragraphs 1 and 2 of Article 107 of the Constitution, the Constitutional Court has held that, under the Constitution, after the Constitutional Court declares a law (part thereof) or another act (part thereof) of the Seimas, an act of the President of the Republic, or an act (part thereof) of the Government to be in conflict with the Constitution, the state institutions that have issued such a legal act – the Seimas, the President of the Republic, or the Government – are prohibited from repeatedly establishing the legal regulation that has been ruled to be in conflict with the Constitution, by adopting certain laws or other legal acts afterwards (ruling of 30 May 2003, the decision of 8 August 2006, and the rulings of 25 October 2011 and 5 September 2012); the legal force of a ruling of the Constitutional Court to declare a legal act or part thereof as unconstitutional may not be overruled by a repeated adoption of an analogous legal act or part thereof (*inter alia*, the rulings of 30 May 2003, 28 March 2006, 6 June 2006, and 5 September 2012).

Thus, the finality and non-appealability of the decisions of the Constitutional Court established in Paragraph 2 of Article 107 of the Constitution are the basis for the constitutional prohibition on overruling

the legal force of a final act of the Constitutional Court. In its ruling of 5 September 2012, the Constitutional Court held that Paragraphs 1 and 2 of Article 107 of the Constitution, *inter alia*, give rise to the prohibition on repeatedly establishing, by means of later adopted laws or other legal acts, any such a legal regulation that is incompatible with the concept of the provisions of the Constitution set out in the acts of the Constitutional Court. While taking account of that, it needs to be noted that the constitutional prohibition on overruling the legal force of a final act of the Constitutional Court means not only the prohibition on adopting a legal act (part thereof) of the same title, legal force, subject of regulation, and scope as the one that the Constitutional Court has declared to be in conflict with the Constitution, but also the prohibition on adopting a legal act (part thereof) of a different title, legal force, subject of regulation, and scope where the content whereof would be completely or partially identical to such a legal act (part thereof) the legal regulation established in which has been, in terms of its content, declared by the Constitutional Court to be in conflict with the Constitution.

It also needs to be noted that the constitutional prohibition on overruling the legal force of a final act of the Constitutional Court is one of the means of protection consolidated in the Constitution in order to ensure the supremacy of the Constitution and the rule of law. As the Constitutional Court noted in its ruling of 5 September 2012, if the legislature, nonetheless, adopted a law whereby it disregards the said prohibition, such a law could not be a lawful ground for acquiring particular rights or a legal status; a different interpretation of Paragraphs 1 and 2 of Article 107 of the Constitution would not be in line with, *inter alia*, the principle of the supremacy of the Constitution, as well as the constitutional principles of the separation of powers and a state under the rule of law; in addition, this would also be incompatible with the general legal principle of *ex injuria jus non oritur* (illegal acts cannot create law).

Thus, the provision of Paragraph 2 of Article 107 of the Constitution implies, *inter alia*, that, if the prohibition on overruling the legal force of a final act of the Constitutional Court is violated, the principle of the supremacy of the Constitution, which is consolidated in Paragraph 1 of Article 7 of the Constitution, the related constitutional imperative of the rule of law, as well as other aspects of the principle of the supremacy of the Constitution, *inter alia*, the principle of the separation of powers, which is consolidated in Paragraph 1 of Article 5 of the Constitution, and the provision of Paragraph 2 of Article 5 thereof, whereby the scope of powers is limited by the Constitution, are simultaneously denied. While taking account of that, a legal act (part thereof) whereby an attempt is made to overrule the legal force of a final legal act of the Constitutional Court must not be considered a legal basis for acquiring legitimate expectations, certain rights, or a legal status, i.e. the consequences of the application of such a legal act (part thereof) could be regarded as anticonstitutional, *inter alia*, the consequences that arose before the adoption of the decision of the Constitutional Court that this legal act (part thereof) is in conflict with the Constitution. The opposite interpretation of Paragraph 2 of Article 107 of the Constitution would mean that, under the Constitution, the law-making subjects are provided with the possibility of overruling the legal force of final acts of the Constitutional Court, i.e. the possibility of not following the Constitution and laws for a certain period of time, until the Constitutional Court repeatedly declares the respective legal regulation to be in conflict with the Constitution. It needs to be emphasised that the recognition of such a possibility would be equal to the denial of the essence of the principle of the supremacy of the Constitution and the constitutional imperative of the rule of law; thus, the said recognition would be inconsistent with the requirements of administering constitutional justice.

In this context, it needs to be noted that ... under the Constitution, *inter alia*, Paragraph 1 of Article 102 thereof, the Constitutional Court is the institution of constitutional justice, which administers constitutional justice and guarantees constitutional lawfulness and the supremacy of the Constitution in the legal system. While taking account of that, the conclusion should be drawn that the provisions of Paragraph 1 of Article 102 and Paragraph 2 of Article 107 of the Constitution, interpreted in the context of the principle of the supremacy of the Constitution, and the constitutional imperative of the rule of law, *inter alia*, give rise to the powers of the Constitutional Court, upon establishing in a constitutional justice case that an impugned legal act (part thereof) is in conflict with the Constitution and having assessed all circumstances, also to hold that this act (part thereof) should be assessed as a violation of the constitutional

prohibition on overruling the legal force of a final act of the Constitutional Court, and to declare unconstitutional the circumstances of the application of such a legal act (part thereof).

It needs to be noted that, while implementing such constitutional powers, the Constitutional Court is also bound by other imperatives of the principle of a state under the rule of law, *inter alia*, the requirements for the protection of legitimate expectations, justice, reasonableness, proportionality, *impossibilium nulla obligatio est* (nobody is obliged to do something that is impossible), and *lex non cogit ad impossibilia* (legal acts may not require impossible things). In other words, having established a violation of the constitutional prohibition on overruling the legal force of a final act of the Constitutional Court, the Constitutional Court, when deciding whether its ruling declaring a legal act (part thereof) violating this prohibition to be in conflict with the Constitution must be applied retroactively, must assess (in view of the circumstances of a constitutional justice case at issue) the possible consequences of such retroactive applicability, *inter alia*, the fact whether such applicability is possible at all, whether it would create such a burden upon society and the state that would be disproportionate to the objective aimed at removing completely the consequences of the unconstitutional act, and whether it would create such consequences related to the said burden that would be especially unfavourable for human rights and freedoms.

In this context, it needs to be noted that, in certain special cases, the Constitution generally does not preclude the protection and defence of also such acquired rights of a person arising from legal acts declared later to be in conflict with the Constitution (or from substatutory legal acts declared later to be in conflict with the Constitution and/or laws) where the failure to defend or protect such rights would result in greater harm sustained by a person, other persons, society, or the state than harm inflicted in the case of total non-defence or non-protection, or partial defence or protection of the said rights; when deciding whether the acquired rights gained by a person during the period of the validity of a legal act that is later declared to be in conflict with the Constitution (or to be in conflict with the Constitution and/or laws if such a legal act is substatutory) must be protected and defended or not (and if so, to what extent), it is necessary in every case to find out whether, in the case of the failure to protect and defend such acquired rights, other values protected by the Constitution would be violated and whether the balance of values consolidated, protected, and defended by the Constitution would be disturbed (rulings of 13 December 2004 and 5 July 2007 and the decision of 4 July 2008).

The prohibition precluding a court from applying a legal act declared in conflict with the Constitution (Article 110 of the Constitution)

The Constitutional Court's decision of 19 November 2012

As the Constitutional Court noted in its ruling of 30 December 2003, Article 110 of the Constitution consolidates the prohibition on applying a law that is in conflict with the Constitution and establishes the constitutional duty of a court investigating a case, if it faces doubts about the conformity of a law or another legal act that must be applied in a concrete case with the Constitution, to suspend the consideration of the case and apply to the Constitutional Court, requesting it to decide whether the law or another legal act in question is in compliance with the Constitution; such a constitutional regulation seeks to ensure that a legal act (part thereof) that is in conflict with the Constitution would not be applied, that no unconstitutional legal consequences of the application of such a legal act (part thereof) would arise, and that the rights of a person would not be violated.

Thus, Article 110 of the Constitution establishes an exception to the general rule prescribed in Paragraph 1 of Article 107 thereof that the legal force of decisions of the Constitutional Court is prospective: a court in a case considered by it may not apply a legal act (part thereof) that was declared in conflict with the Constitution by the Constitutional Court when it was implementing the powers established in Paragraph 1 of Article 102 of the Constitution. If the prohibition, which is consolidated in Paragraph 1 of Article 110 of the Constitution, on applying a legal act (part thereof) that is in conflict with the Constitution is interpreted in a different manner, the principle of the supremacy of the Constitution, which is consolidated in Paragraph 1 of Article 7 of the Constitution, the related constitutional imperative of the rule of law, as well as other aspects of the principle of the supremacy of the Constitution, would be denied,

inter alia, the principle of the direct application of the Constitution, which is consolidated in Paragraph 1 of Article 6 of the Constitution, the essence of the right of every person to defend his/her rights directly by invoking the Constitution, which is consolidated in Paragraph 2 of this article, and the essence of the right of every person to apply to a court while defending the violated constitutional rights or freedoms, which is consolidated in Paragraph 1 of Article 30 of the Constitution, would be denied.

The legal force of a decision of the Constitutional Court on accepting a petition

The Constitutional Court's decision of 13 November 2013

The decision of the Constitutional Court on accepting the ... petition neither approves nor denies the arguments on which the position of the Seimas, the petitioner, is based; in the course of adopting such decisions, the fact whether the petition is based on legal reasoning is of essential significance (decisions of 15 December 2006, 8 January 2008, 8 October 2008, and 3 April 2009).

[...]

... under Paragraph 4 of Article 106 of the Constitution, a resolution of the Seimas asking for an investigation into the conformity of an act with the Constitution suspends the validity of that act. Under Paragraph 1 of Article 107 of the Constitution, a law (or part thereof) of the Republic of Lithuania or another act (or part thereof) of the Seimas, an act of the President of the Republic, or an act (or part thereof) of the Government may not be applied from the day of the official publication of the decision of the Constitutional Court that the act in question (or part thereof) is in conflict with the Constitution. A systemic interpretation of these provisions makes it possible to hold that the decision of the Constitutional Court on accepting a petition set out in a resolution of the Seimas requesting an investigation into whether the provisions of acts of the Government comply with the Constitution suspends the validity of the respective provisions. The fact that the Constitutional Court accepts a petition of the Seimas, the petitioner, and the suspension of the validity of the respective legal act after the accepting of the petition neither quash nor change the legal effects that have occurred (decision of 8 October 2008).

A substatory legal act that is identical to a legal act declared in conflict with the Constitution where such a substatory legal act was adopted in the course of implementing the said legal act may not be applied (Paragraph 1 of Article 107 of the Constitution)

The Constitutional Court's decision of 15 December 2015

... where a legal act (part thereof) adopted by the Seimas is declared unconstitutional by a ruling of the Constitutional Court and, therefore, must not be applied in any situations, this means that the legal force of such a legal act (part thereof) is abolished and state institutions and their officials are under the duty either to abolish such substatory legal acts (provisions thereof) that are of identical content and were adopted in the course of implementing the aforesaid legal act (part thereof) or to amend them in such a way that the content of a newly established legal regulation would not be identical to the one laid down in the unconstitutional legal act; until the moment of the fulfilment of this duty, the respective substatory legal act (part thereof) may not be applied under any circumstances. If such a substatory legal act (part thereof) were applied, the concept of the hierarchy of legal acts, which is consolidated in the Constitution, would be denied.

The presumption of the constitutionality of legal acts and of the lawfulness of the consequences of the application of such legal acts (Paragraph 1 of Article 107 of the Constitution)

The Constitutional Court's ruling of 27 April 2016

When interpreting Paragraph 1 of Article 107 of the Constitution, the Constitutional Court has disclosed the content of the presumption of the constitutionality of legal acts and of the constitutionality of the consequences of the application of such legal acts: the provision of Paragraph 1 of Article 107 of the Constitution, whereby a law (part thereof) may not be applied from the day of the official publication of the decision of the Constitutional Court that the act in question (part thereof) is in conflict with the

Constitution, means that, as long as the Constitutional Court has not adopted a decision that a certain legal act (part thereof) is in conflict with the Constitution, it is presumed that such a legal act (part thereof) is in compliance with the Constitution and that the legal consequences that have appeared on the basis of the act in question are legitimate (*inter alia*, the rulings of 30 December 2003 and 25 October 2011 and the decision of 19 December 2012).

Consequently, under Paragraph 1 of Article 107 of the Constitution, until the moment when a decision of the Constitutional Court is officially published that a certain legal act (part thereof) is in conflict with the Constitution, it is presumed that the legal act (part thereof) in question is in compliance with the Constitution, and that the legal consequences (as, for instance, where, on the basis of a decision adopted by an institution following the said legal act (part thereof), a person acquired certain rights or a certain legal status or, on the basis of a decision adopted by an institution, a person was not granted certain rights or a certain legal status) that have appeared on the basis of the legal act in question are legitimate (ruling of 25 October 2011).

When the Constitutional Court administers constitutional justice, the stability of the legal system may not be violated and the trust of the subjects of legal relationships in legal acts adopted in the state may not be undermined

The Constitutional Court's ruling of 16 April 2019

Paragraph 1 of Article 102 of the Constitution stipulates that the Constitutional Court decides whether laws and other acts of the Seimas are in conflict with the Constitution and whether the acts of the President of the Republic and the Government are in conflict with the Constitution and laws. The Constitutional Court ensures the supremacy of the Constitution in the legal system and administers constitutional justice.

As the Constitutional Court has held on more than one occasion, it exercises constitutional judicial review; the Constitutional Court is the institution of constitutional justice; while deciding, within its competence, on the compliance of lower-ranking legal acts (parts thereof) with higher-ranking legal acts, *inter alia* (and, first of all), with the Constitution, and exercising its other constitutional powers, the Constitutional Court – an autonomous and independent court – administers constitutional justice and guarantees constitutional lawfulness and the supremacy of the Constitution in the legal system.

In this context, it should be noted that the concept of constitutional justice, which stems from the Constitution, implies not formal and nominal constitutional justice, but such final acts of the Constitutional Court that are not unfair by their content; otherwise, if no possibility is created for the Constitutional Court to adopt, in accordance with the powers conferred on it, such a final act that would meet the criteria of justice, the supremacy of the Constitution in the legal system would not be ensured, and the administration of constitutional justice and the ensuring of constitutional lawfulness would be prevented; the powers of the Constitutional Court to administer constitutional justice and to ensure constitutional lawfulness are inseparable from the imperatives of the constitutional principle of a state under the rule of law, *inter alia*, from the requirements of the protection of legitimate expectations, legal security, legal certainty, justice, and reasonableness (ruling of 19 June 2018).

... under Paragraph 1 of Article 107 of the Constitution, a legal act (or part thereof) may not be applied from the day of the official publication of the decision of the Constitutional Court that the act in question (or part thereof) is in conflict with the Constitution.

In this context, it should be noted that Paragraph 1 of Article 107 of the Constitution consolidates the general rule that the legal force of decisions adopted by the Constitutional Court is prospective (*inter alia*, the ruling of 30 December 2003 and the decisions of 19 December 2012 and 21 March 2019). It should also be noted that Paragraph 1 of Article 107 of the Constitution gives rise to the presumption of the constitutionality of legal acts and the legitimacy of the consequences of their application: as the Constitutional Court has held on more than one occasion, the provision of Paragraph 1 of Article 107 of the Constitution that a legal act (part thereof) may not be applied from the day of the official publication of the decision of the Constitutional Court that the act in question (part thereof) is in conflict with the Constitution means that, as long as the Constitutional Court has not officially published the decision that a

certain legal act (part thereof) is in conflict with the Constitution, it is presumed that such a legal act (part thereof) is in compliance with the Constitution and that the legal consequences that have appeared on the basis of the act in question are legitimate (*inter alia*, the rulings of 30 December 2003 and 25 October 2011 and the decision of 21 March 2019).

Therefore, in the light of the above-mentioned imperatives of the constitutional principle of a state under the rule of law, *inter alia*, the requirements of the protection of legitimate expectations, legal security, legal certainty, justice, and reasonableness, as well as in the light of the imperative of the balance of constitutional values and the above-mentioned presumption of the constitutionality and legitimacy of legal acts, it should be noted that, when the Constitutional Court administers constitutional justice and ensures constitutional lawfulness by adopting rulings in the cases before it, the stability of the legal system may not be violated and the trust of the subjects of legal relationships in legal acts adopted in the state may not be undermined.

The duty of law-making subjects to establish a legal regulation that is not in conflict with the Constitution

The Constitutional Court's ruling of 25 November 2019

... as held by the Constitutional Court, the removal of legal gaps is a matter within the competence of the respective (competent) law-making subject; it is also possible to fill legal gaps to a certain extent in the course of the application of law and, thus, also in the course of interpreting law, *inter alia*, by courts that administer justice and, within their competence, decide individual cases and are obliged to interpret law in order they could apply it; courts can fill legal gaps on an ad hoc basis, i.e. they may remove legal gaps with respect to an individual social relationship due to which a concrete dispute is decided in the respective case before the court. It is possible to conclusively remove legal gaps only when the law-making institutions issue the respective legal acts; the possibility of filling legal gaps ad hoc does not mean that the legislature does not have the duty, paying regard to the Constitution and within a reasonable time period, to establish the proper legal regulation of particular relationships by means of a law (*inter alia*, the decision of 8 August 2006 and the ruling of 7 June 2007). The constitutional duty to establish the proper legal regulation of particular relationships by means of legal acts within a reasonable time period and having regard to the Constitution is also *mutatis mutandis* applicable to other law-making subjects.

The suspension of the validity of a legal act impugned before the Constitutional Court

The Constitutional Court's decision (no KT98-S93/2020) of 28 May 2020

... under Paragraph 5 (wording of 21 March 2019) of Article 106 of the Constitution, a resolution of the Seimas asking for an investigation into the conformity of an act with the Constitution suspends the validity of that act. It should be noted that the suspension of the validity of a legal act, as provided for in Paragraph 5 of Article 106 of the Constitution, in those cases where the President of the Republic or the Seimas, by means of its resolution, applies to the Constitutional Court concerning the compliance of this legal act with the Constitution does not in itself deny the presumption of the constitutionality of the impugned legal act and the legitimacy of the consequences of its application, which stems from Paragraph 1 of Article 107 of the Constitution.

In this context, it should also be noted that the Constitutional Court has held on more than one occasion that the decision of the Constitutional Court to accept a petition of the Seimas, the petitioner, and the suspension of the validity of the respective legal act upon accepting the petition neither annul nor change the legal consequences that have occurred (decisions of 8 January 2008, 8 October 2008, and 13 November 2013).

8.5.3. The publication of acts adopted by the Constitutional Court

The powers of the Constitutional Court to postpone the official publication of its rulings (Paragraph 1 of Article 107 of the Constitution)*The Constitutional Court's ruling of 19 January 2005*

... from the day of the public pronouncement of a ruling or another decision of the Constitutional Court in the courtroom until its official publication ... a certain period of time passes. Thus, normally, after a ruling of the Constitutional Court is pronounced in the courtroom, its content is known before its official publication, although, according to the procedure set by the Constitution and laws, such a ruling of the Constitutional Court is not yet valid.

Under Paragraph 1 of Article 107 of the Constitution, a law (or part thereof) may not be applied from the day of the official publication of the decision of the Constitutional Court that the law in question (or part thereof) is in conflict with the Constitution. Thus, after the entry into effect of a ruling of the Constitutional Court that has declared a law (part thereof) to be conflicting with the Constitution, there might appear various indeterminacies in the legal system, *lacunae legis* – gaps in the legal regulation, or even a vacuum. Thus, it is necessary to modify the regulation laid down in laws in such a way that the gaps in the legal regulation and other uncertainties would be removed and the legal regulation would be clear and harmonised.

Under the Constitution, the Constitutional Court, having assessed, *inter alia*, what legal situation might arise after a ruling of the Constitutional Court becomes effective, may establish the date of the official publication of that ruling; the Constitutional Court may postpone the official publication of its ruling if this is necessary to give the legislature time to remove the *lacunae legis* that would occur if the respective ruling of the Constitutional Court were officially published immediately after its public pronouncement at the hearing of the Constitutional Court and if such a *lacunae legis* constituted the preconditions for denying, in essence, certain values defended and protected by the Constitution. The said postponement of the official publication of a ruling of the Constitutional Court (*inter alia*, a ruling by which a certain law (or part thereof) is ruled to be in conflict with the Constitution) is a precondition stemming from the Constitution in order to avoid certain consequences unfavourable to society and the state, as well as to human rights and freedoms, that might arise if the respective ruling of the Constitutional Court were officially published immediately after it is pronounced publicly at the hearing of the Constitutional Court and if it became effective on the day of its official publication.

It should be stressed that the legislature, while passing new laws or amending and supplementing valid ones, may not disregard the concept of the provisions of the Constitution and other legal arguments set out in a ruling of the Constitutional Court that was officially published and became effective. Otherwise, the preconditions would be created to declare such laws, provided the Constitutional Court was addressed regarding their constitutionality, to be in conflict with the Constitution. ... such preconditions could also emerge in cases where laws are adopted or valid laws are amended or supplemented while disregarding the concept of the provisions of the Constitution and other legal arguments stated in a ruling of the Constitutional Court publicly pronounced at the hearing of the Constitutional Court but not yet published officially, regardless of whether or not such a ruling of the Constitutional Court ruled a certain law (or part thereof) to be in conflict with the Constitution.

It should be held that the said statements regarding the time passing from the public pronouncement of a ruling of the Constitutional Court in the courtroom until the official publication of such a ruling may be applied *mutatis mutandis* to conclusions and decisions of the Constitutional Court.

The powers of the Constitutional Court to postpone the official publication of its rulings*The Constitutional Court's ruling of 1 July 2013*

... the Constitutional Court has the constitutional powers to establish a later date of the official publication (thus, also that of the entry into force) of its ruling that declares a certain legal act (part thereof)

to be in conflict with higher-ranking legal acts, *inter alia* (and, first of all), with the Constitution, in cases where, in order to implement that ruling, it is necessary to accordingly redistribute the financial resources of the state and to adopt the related amendments to laws.

8.5.4. The interpretation of acts adopted by the Constitutional Court

The powers of the Constitutional Court to interpret its final acts

The Constitutional Court's decision of 14 March 2006

While deciding, within its competence, on the compliance of lower-ranking legal acts (parts thereof) with higher-ranking legal acts, *inter alia* (and, first of all), with the Constitution, and exercising its other constitutional powers, the Constitutional Court administers constitutional justice and guarantees constitutional lawfulness and the supremacy of the Constitution in the legal system. Administering constitutional justice, as well as guaranteeing constitutional lawfulness and the supremacy of the Constitution in the legal system, implies that every decision of the Constitutional Court must be argued properly (clearly and rationally) in the respective act of the Constitutional Court. In this context, it should be noted that, as held by the Constitutional Court, a ruling of the Constitutional Court is integral, its operative part is based on the arguments of the reasoning part (decisions of 12 January 2000, 11 February 2004, 13 February 2004, and 10 February 2005).

On the other hand, such situations are possible where certain provisions of a ruling or another final act of the Constitutional Court are not clear enough to the subject that must follow and execute that ruling of another act of the Constitutional Court. Such situations are also possible where, due to certain reasons, the Constitutional Court sees that certain provisions of a ruling or another final act of the Constitutional Court must be interpreted in order to ensure the proper execution of that ruling or another act of the Constitutional Court so that the said ruling or another act of the Constitutional Court would be followed.

Even though the powers of the Constitutional Court to interpret its rulings and other final acts are not *expressis verbis* consolidated in the Constitution, they doubtlessly arise from the Constitution – the entirety of the constitutional legal regulation (*inter alia*, the constitutional principle of a state under the rule of law): such powers of the Constitutional Court are implied by the constitutional mission of the Constitutional Court to administer constitutional justice and to guarantee constitutional lawfulness and the supremacy of the Constitution in the legal system. This implies the necessity for the Constitutional Court, under the specified circumstances, to interpret the respective ruling or another final act of the Constitutional Court.

The purpose of the institution of the interpretation of rulings and other final acts of the Constitutional Court is to reveal the content and meaning of certain provisions of a ruling or another final act of the Constitutional Court more broadly and in more detail where this is necessary so that the proper execution of that ruling or another final act would be ensured and the said ruling or another final act of the Constitutional Court would be followed.

The powers of the Constitutional Court, which arise from the Constitution, to interpret its rulings and other final acts imply the duty of the legislature to establish in the Law on the Constitutional Court (which, under Paragraph 2 of Article 102 of the Constitution, establishes the status of the Constitutional Court and the procedure for the execution of its powers) the following: the definition of the subjects on whose initiative a ruling or another final act of the Constitutional Court may be interpreted; the procedure for applying to the Constitutional Court with a petition requesting the interpretation of a ruling or another final act of the Constitutional Court; and the form of a legal act by which the Constitutional Court performs the interpretation of its rulings. The Law on the Constitutional Court may also establish other elements regarding the implementation of the powers of the Constitutional Court to interpret its rulings.

[...]

... the Constitutional Court must interpret its ruling without changing its content. The Constitutional Court has held that, when interpreting its ruling, the Constitutional Court is bound both by the content of the operative part and reasoning part of its ruling (decisions of 12 January 2000, 11 February 2004, 13 February 2004, and 10 February 2005).

... a decision concerning the interpretation of a ruling of the Constitutional Court is adopted as a separate document. The Constitutional Court has held that a decision adopted concerning the interpretation of a ruling of the Constitutional Court is inseparable from that ruling of the Constitutional Court (decisions of 12 January 2000, 11 February 2004, 13 February 2004, and 10 February 2005).

... while interpreting its ruling, the Constitutional Court may not interpret the content of the ruling in such a way that would change the meaning of its provisions, *inter alia*, the notional entirety of the elements constituting the content of the ruling, and the arguments and reasons upon which that ruling of the Constitutional Court is based.

... the Constitutional Court may not interpret what it did not investigate in the constitutional justice case in which the ruling that is being interpreted was adopted.

Thus, the institution of the interpretation of a ruling (another final act) of the Constitutional Court differs in substance from the institution of the review of a ruling (another final act) of the Constitutional Court.

The interpretation of final acts of the Constitutional Court where this is necessary so that such acts would be properly followed in administering justice

The Constitutional Court's decision of 22 April 2010

In its acts, the Constitutional Court has held more than once that the purpose of the institution of the interpretation of rulings and other final acts of the Constitutional Court is to reveal the content and meaning of certain provisions of a ruling or another final act of the Constitutional Court more broadly and in more detail where this is necessary so that the proper execution of that ruling or another final act would be ensured and the said ruling or another final act of the Constitutional Court would be followed.

Thus, if a court considering a case applies to the Constitutional Court with a petition requesting the interpretation of certain provisions of a ruling or another final act of the Constitutional Court and if the Constitutional Court does not interpret such provisions of its ruling or another final act and does not reveal the content and meaning thereof more broadly and in more detail where this is necessary in order to ensure the proper execution of that ruling or another final act of the Constitutional Court so that the said ruling or another final act of the Constitutional Court would be followed, the values, *inter alia*, the constitutional rights of a person consolidated, defended, and protected by the Constitution could be violated, which would mean that justice would not be administered.

[...]

... the right of the Constitutional Court, which is laid down in ... the Law on the Constitutional Court, to officially interpret its ruling, *inter alia*, on its own initiative, means that the Constitutional Court interprets its rulings or other final acts, i.e. discloses the content and meaning of these acts more broadly and in more detail where this is necessary in order to ensure the proper execution of the respective ruling or another final act of the Constitutional Court and in order to ensure that the respective ruling or another final act of the Constitutional Court would be not formally, but properly followed and that justice consolidated, protected, and defended by the Constitution would be administered. The *ex officio* powers of the Constitutional Court to interpret its rulings or other final acts also mean that the Constitutional Court may interpret its rulings or other final acts where this is necessary so that acts adopted by the Constitutional Court would be followed properly while administering justice irrespective of whether the respective petition of the subjects indicated in the Law on the Constitutional Court is present.

In view of the said circumstances, it needs to be held that, having established the constitutionally justifiable interest of the petitioner – a court considering a case – to remove doubts about the proper execution of rulings or other final acts (provisions thereof) of the Constitutional Court in order that justice would be properly administered in a case considered by that court, the Constitutional Court may accept requests to interpret certain provisions of a ruling or another final act of the Constitutional Court and investigate these requests in the manner prescribed by law, as well as pronounce a decision on such interpretation.

The interpretation of final acts of the Constitutional Court

The Constitutional Court's decision of 29 November 2012

The Constitutional Court has held that, even though the powers of the Constitutional Court to interpret its rulings and other final acts are not *expressis verbis* consolidated in the Constitution, they doubtlessly arise from the Constitution – the entirety of the constitutional legal regulation (*inter alia*, the constitutional principle of a state under the rule of law): such powers of the Constitutional Court are implied by the constitutional mission of the Constitutional Court itself to administer constitutional justice and to guarantee constitutional lawfulness and the supremacy of the Constitution in the legal system (decision of 14 March 2006).

In its acts, the Constitutional Court has held on more than one occasion that the purpose of the institution of the interpretation of its rulings and other final acts is to reveal the content and meaning of certain provisions of a ruling or another final act of the Constitutional Court more broadly and in more detail where this is necessary in order to ensure the proper execution of that ruling or another final act of the Constitutional Court and in order to ensure that the said ruling or another final act of the Constitutional Court would be followed (*inter alia*, the decisions of 22 December 2010, 23 February 2011, and 5 September 2011).

In this context, it needs to be emphasised that the purpose of the interpretation of a ruling or another final act of the Constitutional Court is to explain more comprehensively the provisions and formulations of a ruling or another final act of the Constitutional Court regarding the meaning of which there are some uncertainties, but not to explain how to implement the said ruling or another final act in a concrete situation, *inter alia*, in the area of the application of law.

It should be noted that the interpretation of a ruling or another final act of the Constitutional Court may be significant not only in order to ensure the proper implementation of the decision consolidated in the operative part of that act, but also to ensure the fact that, in the law-making process, proper consideration is given to the official constitutional doctrine formed by the Constitutional Court.

It should be emphasised that petitions requesting the interpretation of an implemented ruling or another final act of the Constitutional Court may not seek the assessment of the compliance of a legal act adopted for implementing the said ruling or another final act of the Constitutional Court with other higher-ranking legal acts, *inter alia* (and, first of all), with the Constitution; this would constitute a matter for a new constitutional justice case.

... it needs to be noted that, under Paragraph 3 of Article 107 of the Constitution, on the basis of the conclusions of the Constitutional Court, the Seimas takes a final decision. Thus, after receiving the conclusion of the Constitutional Court that the election law was violated during the election of the members of the Seimas, the Seimas is obliged to adopt a final decision.

In cases where, on the grounds of a conclusion of the Constitutional Court, a final decision of the Seimas was adopted, the Constitutional Court has the powers to assess and decide on whether or not the interpretation of that conclusion would be senseless and on refusing to interpret it. A conclusion of the Constitutional Court on the grounds of which a final decision of the Seimas was adopted may be interpreted, *inter alia*, for the purpose that, in the law-making process, proper consideration would be given to the official constitutional doctrine formed by the Constitutional Court.

It needs to be noted that a petition requesting the interpretation of the conclusion of the Constitutional Court that during the election of the members of the Seimas the law on elections was violated may not question the compliance of an act of the Seimas adopted on the grounds of the said conclusion with higher-ranking legal acts, *inter alia* (and, first of all), with the Constitution. This may be done by initiating a new constitutional justice case, where subjects provided for in the Constitution apply to the Constitutional Court with a petition.

The Constitutional Court has emphasised on more than one occasion that the consideration of a petition requesting the interpretation of a ruling or another final act of the Constitutional Court does not imply any new constitutional justice case.

In this context, it should be noted that ... the Constitutional Court must interpret its ruling without changing its content. The Constitutional Court has held on more than one occasion that ... while interpreting its ruling, the Constitutional Court may not interpret the content of the ruling in such a way that would change the meaning of its provisions, *inter alia*, the notional entirety of the elements constituting the content of the ruling, and the arguments and reasons upon which that ruling of the Constitutional Court is based. A ruling of the Constitutional Court is integral and all its constituent parts are interrelated; the operative (resolving) part of a ruling is based upon the arguments of the reasoning part; while interpreting its ruling, the Constitutional Court is bound by the content of both the operative part and reasoning part of its ruling. ... the Constitutional Court has also held in its acts on more than one occasion that the Constitutional Court may not interpret what it did not investigate in the constitutional justice case in which the ruling, the interpretation of which is requested, was adopted; this would imply a matter for a separate investigation.

The Constitutional Court has also held that the powers of the Constitutional Court, which arise from the Constitution and which are established in the Law on the Constitutional Court, to officially interpret its rulings may not be interpreted as meaning that they also include the duty of the Constitutional Court to interpret such arguments or reasons of the consolidation and formulation of its ruling or separate provisions thereof that are not specified in that ruling of the Constitutional Court (decision of 14 March 2006).

These provisions *mutatis mutandis* also apply where the Constitutional Court interprets its other final acts, *inter alia*, conclusions presented under Paragraph 3 of Article 105 of the Constitution.

... it also needs to be noted that, in cases where the Constitutional Court is requested to provide the interpretation of the provisions of the operative part of its ruling or another final act by ignoring their link with the provisions of the official constitutional doctrine set out in the reasoning part and with other arguments, the Constitutional Court, while taking account of the fact that the provisions of the operative part of a ruling or another final act may not be interpreted in isolation of the provisions of the official constitutional doctrine set out in the reasoning part and in isolation of other arguments, has the powers to refuse to interpret its ruling or another legal act subsequent to such a petition.

The interpretation of final acts of the Constitutional Court

The Constitutional Court's decision of 13 March 2013

In its acts, the Constitutional Court has held more than once that the purpose of the institution of the interpretation of its rulings and its other final acts is to reveal the content and meaning of certain provisions of a ruling or another final act of the Constitutional Court more broadly and in more detail where this is necessary in order to ensure the proper execution of that ruling or another final act of the Constitutional Court so that the said ruling or another final act of the Constitutional Court would be followed (*inter alia*, the decisions of 22 December 2010, 23 February 2011, 5 September 2011, and 29 November 2012). The interpretation of a ruling or another final act of the Constitutional Court may be significant not only in seeking to ensure the proper implementation of the decision consolidated in the operative part of the said act, but also to ensure that, in the law-making process, proper consideration is given to the official constitutional doctrine formulated by the Constitutional Court (decision of 29 November 2012).

In its decision of 29 November 2012, the Constitutional Court emphasised that the purpose of the interpretation of a ruling or another final act of the Constitutional Court is to explain more comprehensively the provisions and formulations of a ruling or another final act of the Constitutional Court regarding the meaning of which there are some uncertainties, but not to explain how to implement the said ruling or another final act in a concrete situation, *inter alia*, in the area of the application of law.

... the Constitutional Court has held that, in the course of the interpretation of its ruling, it is bound by the content of both the operative and reasoning parts of its ruling. It has also been held on more than one occasion that ... in interpreting its ruling, the Constitutional Court may not interpret the content of the ruling in such a way that would change the meaning of its provisions, *inter alia*, the notional entirety of the elements constituting the content of the ruling, and the arguments and reasons upon which that ruling of the Constitutional Court is based; it has also been held that the Constitutional Court may not interpret what

it did not investigate in the constitutional justice case in which the ruling, the interpretation of which is requested, was adopted. The consideration of a petition requesting the interpretation of a ruling of the Constitutional Court or its other final act does not imply a new constitutional justice case.

Thus, while interpreting its final acts, the Constitutional Court does not review them; it may not refer to reasons other than those set out in the reasoning part of the interpreted legal act and it may not interpret its final act differently from what is decided in its operative part.

It needs to be noted that the Constitutional Court carries out constitutional judicial control; the Constitutional Court is the institution of constitutional justice; the Constitutional Court – an individual and independent court – administers constitutional justice and guarantees constitutional lawfulness and the supremacy of the Constitution in the legal system (*inter alia*, the rulings of 6 June 2006 and 29 June 2010 and the decision of 19 December 2012). It also needs to be noted that the Constitutional Court, while invoking the official constitutional doctrine and precedents that it itself has formed, must ensure the continuity of the constitutional jurisprudence (its coherence and consistency) and the predictability of its decisions (decision of 21 November 2006 and the rulings of 22 October 2007, 24 October 2007, and 5 September 2012).

Thus, the Constitutional Court is a legal, but not a political institution. The Constitutional Court decides the legal issues assigned to its competence by the Constitution only by invoking legal arguments, *inter alia*, the official constitutional doctrine and precedents that it itself formulated. While taking account of this, it needs to be noted that the interpretation of final acts of the Constitutional Court may not be determined by accidental (from the legal point of view) factors (for example, change in the composition of the Constitutional Court); the Constitutional Court may not interpret its final acts by following, *inter alia*, political expediency arguments, documents of political parties or other public organisations, opinions of and assessments by politicians, political science or sociological research, or results of public opinion polls. Otherwise, the preconditions may arise for doubting the impartiality of the Constitutional Court and a threat may emerge to its independence and the stability of the Constitution itself, *inter alia*, the official constitutional doctrine.

It should also be noted that the uniformity and continuity of the official constitutional doctrine imply the necessity to interpret each provision of a ruling or another final act of the Constitutional Court in the light of both the entire official constitutional doctrinal context and other provisions (both explicit and implicit) of the Constitution that are related to the provision (provisions) of the Constitution in the course of the interpretation of which the respective provision of the official constitutional doctrine was formulated in a certain ruling or another final act of the Constitutional Court. As the Constitutional Court has held more than once, no official constitutional doctrinal provision of a ruling or another final act of the Constitutional Court may be interpreted in isolation, by ignoring its meaning and systemic links with other official constitutional doctrinal provisions set out in that ruling or another final act of the Constitutional Court, or in other acts of the Constitutional Court, as well as with other provisions (explicit and implicit) of the Constitution (*inter alia*, the decisions of 28 October 2009, 6 November 2009, and 18 December 2009).

[...]

The Constitutional Court has also held more than once that, in the official interpretation ... of rulings and other final acts of the Constitutional Court, the official constitutional doctrine is not modified; the modification of the official constitutional doctrine (which, undoubtedly, must always be constitutionally justified and explicitly reasoned in the respective act of the Constitutional Court) should be related to the consideration of new constitutional justice cases and the creation of new precedents of the Constitutional Court therein, but not with the official interpretation of the provisions of rulings and other final acts of the Constitutional Court (decisions of 6 December 2007, 1 February 2008, 4 July 2008, 15 January 2009, 15 May 2009, 28 October 2009, 6 November 2009, and 18 December 2009).

The interpretation of final acts of the Constitutional Court

The Constitutional Court's decision of 8 November 2017

... when interpreting its final acts, the Constitutional Court may not amend them and/or modify the official constitutional doctrine set out in these acts on the grounds of the changed legal regulation established in laws and other legal acts where the legal regulation changed after the adoption of the said final acts.

The decision of the Constitutional Court to accept a petition is not a final act the provisions of which the Constitutional Court has the powers to interpret under the Constitution

The Constitutional Court's decision (no KT98-S93/2020) of 28 May 2020

... the decision of the Constitutional Court [to accept a petition] is not a final act of the Constitutional Court the provisions of which the Constitutional Court has the powers to officially interpret under the Constitution and the Law on the Constitutional Court. By such a decision, neither the constitutional justice case is completed (upon having considered the constitutional justice case on its merits, or having dismissed the instituted legal proceedings, or having dismissed the case) nor the consideration of the petition is refused.

An announcement by the President of the Constitutional Court is not a final act the provisions of which the Constitutional Court has the powers to interpret under the Constitution

The Constitutional Court's decision (no KT98-S93/2020) of 28 May 2020

... an announcement by the President of the Constitutional Court is not a final act of the Constitutional Court the provisions of which the Constitutional Court has the powers to officially interpret under the Constitution and the Law on the Constitutional Court.

8.5.5. The review of acts adopted by the Constitutional Court

The review of final acts adopted by the Constitutional Court; the development of the official constitutional doctrine does not constitute grounds for reviewing the final acts of the Constitutional Court adopted in previous cases

The Constitutional Court's ruling of 28 March 2006

Under Paragraph 2 of Article 107 of the Constitution, which ... prescribes that the decisions of the Constitutional Court on the issues assigned to its competence by the Constitution are final and not subject to appeal, the rulings, conclusions, and decisions of the Constitutional Court by which a constitutional justice case is completed, i.e. final acts of the Constitutional Court, may not be reviewed except in cases where the necessity to review them stems from the Constitution itself.

... the rulings, conclusions, and decisions of the Constitutional Court by which a constitutional justice case is completed, i.e. final acts of the Constitutional Court, are final and not subject to appeal, irrespective of whether the Constitutional Court adopts such acts in the respective constitutional justice case after it has investigated on the merits the compliance of a legal act (part thereof) with the Constitution (another higher-ranking legal act) or has not investigated the compliance of a legal act (part thereof) with the Constitution (another higher-ranking legal act) on the merits but, by means of a properly (clearly and rationally) reasoned decision, has refused to consider the petition, or has dismissed the instituted legal proceedings (case) (where the respective petition has been received at the Constitutional Court and the preparation of a constitutional justice case for a hearing at the Constitutional Court has begun, or if it has already been considered in a hearing at the Constitutional Court).

... the phrase "shall be final and not subject to appeal" of Paragraph 2 of Article 107 of the Constitution, which ... prescribes that the decisions of the Constitutional Court on the issues assigned to its competence by the Constitution are final and not subject to appeal, means that rulings, conclusions, or decisions of the Constitutional Court by which a constitutional justice case is completed, i.e. final acts of the Constitutional Court, are obligatory for all state institutions, courts, all enterprises, establishments and organisations, as well as officials and citizens, including the Constitutional Court itself: final acts of the Constitutional Court are obligatory for the Constitutional Court itself and they restrict the Constitutional

Court from the aspect that it may not change them or review them if there are no constitutional grounds for doing so.

Thus, it needs to be emphasised that, under the Constitution, no development of the official constitutional doctrine – neither the supplementing of the conception of the provisions of the Constitution provided in the acts of the Constitutional Court adopted in previous constitutional justice cases with new elements (fragments) nor the reinterpretation of the official constitutional doctrinal provisions formulated previously where the official constitutional doctrine is modified – may constitute or constitutes grounds for reviewing the rulings, conclusions, or decisions (or their reasoning) that were adopted in previous constitutional justice cases and by which certain constitutional justice cases were completed.

The same can also be said about such cases where the Constitutional Court, after it receives a petition of a court of general jurisdiction or a specialised court (established under Paragraph 2 of Article 111 of the Constitution) requesting an investigation into and a decision on whether a certain act (part thereof) passed by the Seimas, the President of the Republic, or the Government or that adopted by referendum is in conflict with a higher-ranking legal act, *inter alia* (and, first of all), with the Constitution, does not decide, under the Constitution and the Law on the Constitutional Court, on the respective question on the merits by means of a properly (clearly and rationally) argued decision – it refuses to consider the petition or dismisses the instituted legal proceedings (case) where the respective petition has been received at the Constitutional Court and the preparation of a constitutional justice case for a hearing at the Constitutional Court has begun or it has already been considered in a hearing at the Constitutional Court.

[...]

... neither any development of the official constitutional doctrine nor the application of new methods of the interpretation of law while interpreting certain provisions of the Constitution constitutes or may constitute grounds for the Constitutional Court to review its final legal acts – rulings, conclusions, and decisions, *inter alia*, those by means of which the Constitutional Court refuses to consider a petition of the petitioner – a court – requesting an investigation into and a decision on whether a legal act (part thereof) passed by the Seimas, the President of the Republic, or the Government or that adopted by referendum is in conflict with a higher-ranking legal act, *inter alia* (and, first of all), with the Constitution, or by which the instituted legal proceedings (case) are (is) dismissed where the respective petition has been received at the Constitutional Court and the preparation of a constitutional justice case for a hearing at the Constitutional Court has begun or it has already been considered in a hearing at the Constitutional Court.

... Paragraph 1 of Article 107 of the Constitution means that every legal act (part thereof) passed by the Seimas, the President of the Republic, or the Government or that adopted by referendum where such a legal act is declared in conflict with any higher-ranking legal act, *inter alia* (and, first of all), with the Constitution, is removed from the Lithuanian legal system for good and may never be applied.

... [the] provisions [of Paragraphs 1 and 2 of Article 107] of the Constitution help to ensure the stability and certainty of the legal regulation of social relationships, the continuity of the jurisprudence of the Constitutional Court (and other courts), the predictability of their activity and adopted decisions, while the subjects of constitutional legal relationships are protected from such review of final legal acts adopted by the Constitutional Court that would be determined not by the objective constitutional necessity, but by accidental (from the legal point of view) factors.

The powers of the Constitutional Court to review its final acts where the necessity to review them stems from the Constitution itself (where new essential circumstances come to light)

The Constitutional Court's ruling of 28 March 2006

Although the Constitution does not *expressis verbis* specify that the Constitutional Court has the powers to review its rulings, conclusions, and decisions, nor does it contain any *expressis verbis* specified grounds empowering the Constitutional Court to review its rulings, conclusions, and decisions, this does not mean that the said powers and grounds for the Constitutional Court are not established in the Constitution at all. The powers of the Constitutional Court to review its rulings, conclusions, and decisions

arise out of the constitutional mission of the Constitutional Court to administer constitutional justice, to guarantee constitutional lawfulness and the supremacy of the Constitution in the legal system; such powers of the Constitutional Court are also implied by the constitutional principle of a state under the rule of law, according to which it is required that jurisdictional institutions (thus, including the Constitutional Court) seek to establish the objective truth and that they adopt their decisions only on the grounds of law (rulings of 11 May 1999, 19 September 2000, 24 January 2003, and 13 December 2004).

The opposite interpretation would mean that the Constitutional Court may not review its rulings, conclusions, and decisions even where they were adopted when the Constitutional Court did not know about such essential circumstances that, if had been known, could determine a different content of the adopted rulings, conclusions, and decisions. It is obvious that such interpretation would be inconsistent with the constitutional mission of the Constitutional Court and the concept of the powers established for it in the Constitution, because this would imply, *inter alia*, the fact the Constitutional Court may not administer constitutional justice and guarantee constitutional lawfulness and the supremacy of the Constitution in the legal system.

However, it should be emphasised that the Constitutional Court may review its rulings, conclusions, and decisions only if there are constitutional grounds for doing so. The interpretation that the Constitutional Court may also review its rulings, conclusions, and decisions where the necessity to review them does not arise out of the Constitution, i.e. where no significant new circumstances come to light that were unknown at the time when the respective final act of the Constitutional Court was passed, would mean that the Constitutional Court is not bound by Paragraph 2 of Article 107 of the Constitution, under which ... final acts of the Constitutional Court are binding on the Constitutional Court itself and they restrict the Constitutional Court from the aspect that it may not change or review them if there are no constitutional grounds for doing so. Such interpretation would also not be in line with the Constitution because it would create the preconditions for denying the continuity of the constitutional jurisprudence and violating the principle of the supremacy of the Constitution, the constitutional principle of a state under the rule of law, and other provisions of the Constitution.

[...]

... the Constitutional Court has the powers to review not only its rulings, but also its other final acts.

However, it should be emphasised that ... under the Constitution, the final acts of the Constitutional Court are final and not subject to appeal; therefore, they are obligatory for the Constitutional Court itself (irrespective of whether the Constitutional Court adopts such acts in the respective constitutional justice case after it has investigated on the merits the compliance of a legal act (part thereof) with the Constitution (another higher-ranking legal act) or where it has not investigated such compliance on the merits); they restrict the Constitutional Court from the aspect that it may not change or review them if there are no constitutional grounds for doing so; they may be reviewed only in cases where the necessity to review them arises out of the Constitution itself. ...

[...]

It needs to be noted that a final act of the Constitutional Court may be reviewed only upon the initiative of the Constitutional Court itself ... This provision does not mean that various legal subjects, *inter alia*, those that, under the Constitution ... may apply to the Constitutional Court with a petition or request on the issues assigned to the jurisdiction of the Constitutional Court, may not raise the question of the review of a final act of the Constitutional Court at the Constitutional Court; however, under the Constitution ... while deciding whether to do so, the Constitutional Court has broad discretion.

Amendments to the Constitution do not constitute grounds for reviewing acts adopted by the Constitutional Court

The Constitutional Court's ruling of 28 March 2006

No amendments or supplements to a higher-ranking legal act (including the Constitution) that are made after the Constitutional Court has declared, by referring to the previous provisions of the Constitution, a certain legal act (part thereof) passed by the Seimas, the President of the Republic, or the Government or

adopted by referendum to be in conflict with a certain higher-ranking legal act, *inter alia* (and, first of all), with the Constitution, may reinstate the legal act (part thereof) declared to be in conflict with a certain higher-ranking legal act, *inter alia* (and, first of all), with the Constitution, in the Lithuanian legal system. Under the Constitution, the Constitutional Court does not have the powers to reinstate such legal acts (parts thereof) in the Lithuanian legal system, either. In the same vein, no amendments or supplements to a higher-ranking legal act (including the Constitution) that are made after the Constitutional Court has declared, by referring to the previous provisions of the Constitution, a certain legal act passed by the Seimas, the President of the Republic, or the Government or adopted by referendum to be in compliance with a certain higher-ranking legal act, *inter alia* (and, first of all), with the Constitution, mean that the decision on the said legal act may or must be changed with retroactive effect. On the other hand, when an amendment to the Constitution is made, the legislature and other law-making subjects must harmonise the legal acts that they have passed and that are still valid with the amended legal regulation; however, this does not imply that the examined constitutional justice cases on the compliance of a certain previous legal regulation with a certain higher-ranking legal regulation, *inter alia* (and, first of all), with the Constitution, must be renewed or that the decisions adopted therein must be reviewed or changed.

This is also *mutatis mutandis* applicable to such cases where the Constitutional Court, referring to the previous provisions of the Constitution, presents a conclusion on any of the questions specified in Paragraph 3 of Article 105 of the Constitution ...: such a conclusion remains valid even if the provisions of the Constitution on the basis of which the respective conclusion was made and presented are changed or repealed. Moreover, this is *mutatis mutandis* applicable to the decisions of the Constitutional Court that are adopted without investigating on the merits the compliance of an impugned legal act (part thereof) with the Constitution (another higher-ranking legal act), but by properly (clearly and rationally) refusing, by means of a reasoned decision, to consider a petition or by dismissing the instituted legal proceedings (case) (if the respective petition has been received at the Constitutional Court and the preparation of a constitutional justice case for a hearing at the Constitutional Court has begun or if it has already been considered in a hearing at the Constitutional Court).

Thus, the Constitution does not give any grounds for reinstating retroactively a legal act (part thereof) that has been declared in conflict with a certain higher-ranking legal regulation, *inter alia* (and, first of all), with one established in the Constitution, in the Lithuanian legal system, or for questioning and annulling particular rulings, conclusions, or decisions of the Constitutional Court that were constitutionally justifiable at the moment when they were adopted. A different interpretation would result in the disregard of not only the provisions of the Constitution that consolidate the institution of constitutional justice – constitutional judicial control – *inter alia*, the fact that the decisions of the Constitutional Court are final and not subject to appeal, but also would lead to the denial of the stability of the Constitution, the predictability of decisions adopted by the Constitutional Court, and the legitimate expectations of various legal subjects where the said expectations are created by the aforementioned decisions.

9. COURTS. THE PROSECUTION SERVICE

9.1. COURTS

9.1.1. The constitutional mission of the judiciary

The administration of justice as the function of courts (Paragraph 1 of Article 109 of the Constitution)

The Constitutional Court's ruling of 21 December 1999

Paragraph 1 of Article 109 of the Constitution prescribes that, in the Republic of Lithuania, justice is administered only by courts. The administration of justice is a function of courts and it determines both the place of the judiciary in the system of institutions of state power and the status of judges. No other state institution or official may carry out this function.

The judiciary

The Constitutional Court's ruling of 28 March 2006

In the Republic of Lithuania, justice is administered only by courts (Paragraph 1 of Article 109 of the Constitution).

Courts – jurisdictional institutions – exercise judicial power, which, as well as the legislative and executive branches, is a fully fledged branch of state power and one of the branches of state power consolidated in the Constitution. The administration of justice is the mission and constitutional competence of the judicial branch.

The judicial branch differs from other branches of state power, *inter alia*, by the fact that it is formed on a professional, but not on a political basis (rulings of 21 December 1999 and 12 July 2001 and the conclusion of 31 March 2004).

Public trust in courts as a condition for the effective activity of the judiciary

The Constitutional Court's ruling of 27 November 2006

Courts, being among state institutions implementing state power, i.e. judicial power in particular, and administering justice, must act so that the public would have trust in them. Public trust in courts is an important element of a democratic state under the rule of law and of an open, just, and harmonious civil society and an important condition for the effective activity of the judiciary. Public trust in courts is determined by various factors, *inter alia*, the qualification of judges, their professionalism, their ability to decide cases following not only laws, but also law, the ensuring of the due process of law, respect for persons participating in the proceedings, the rational legal argumentation (reasoning) of court final acts, the clarity of court final acts to persons participating in a case, etc. Judges must also meet very strict ethical and moral requirements: their reputation must be impeccable; the conduct of a judge – both related to the direct performance of his/her duties and not related to his/her official duties – should not raise any doubts about his/her impartiality and independence; a judge must fulfil his/her duties and behave in such a manner that his/her conduct would not discredit the name of judges.

The administration of justice as the function of courts (Paragraph 1 of Article 109 of the Constitution)

The Constitutional Court's ruling of 25 September 2012

The Constitutional Court, while interpreting Paragraph 1 of Article 109 of the Constitution, which provides that, in the Republic of Lithuania, justice is administered only by courts, has held more than once (*inter alia*, the rulings of 21 December 1999, 9 May 2006, 6 June 2006, 27 November 2006, 24 October 2007, and 21 January 2008) that courts, while administering justice, must ensure the implementation of the rights established in the Constitution, laws, and other legal acts, and they must guarantee the supremacy of law and protect human rights and freedoms. Paragraph 1 of Article 109 of the Constitution gives rise to the duty of courts to consider cases in a fair and objective manner and to adopt reasoned and well-founded decisions (*inter alia*, the rulings of 15 May 2007, 17 September 2008, and 31 January 2011). The principle of justice consolidated in the Constitution, as well as the provision that justice is administered by courts, means that not the adoption of a decision as such in a court, but, rather, the adoption of a just court decision constitutes a constitutional value; the constitutional concept of justice implies not a perfunctory and nominal justice administered by a court, not the outward appearance of justice administered by a court, but, most importantly, such court decisions (other final court acts) that are not unjust according to their content. As it has been held in acts of the Constitutional Court more than once, such justice that is administered only formally by a court is not the justice that is consolidated in and protected and defended by the Constitution (*inter alia*, the rulings of 21 September 2006, 21 January 2008, and 31 January 2011).

The administration of justice as the function of courts (Paragraph 1 of Article 109 of the Constitution)

The Constitutional Court's ruling of 15 November 2013

Paragraph 1 of Article 109 of the Constitution prescribes: "In the Republic of Lithuania, justice shall be administered only by courts."

The administration of justice is a function of courts and it determines both the place of the judiciary in the system of institutions of state power and the status of judges. Neither any other state institution nor any other state official may exercise this function (*inter alia*, the rulings of 21 December 1999, 13 May 2004, and 7 April 2011). Justice is administered by applying special procedural forms the purpose of which is to ensure the rights of a person in court proceedings, to facilitate the establishment of actual circumstances of a case, and to pass a just decision (ruling of 18 April 1996).

When interpreting Article 109 of the Constitution, the Constitutional Court has held on more than one occasion (*inter alia*, in the rulings of 21 December 1999, 9 May 2006, 6 June 2006, and 25 September 2012) that, in the course of administering justice, courts must ensure the implementation of law formulated in the Constitution, laws, and other legal acts, must guarantee the supremacy of law, and must protect human rights and freedoms. The constitutional concept of the administration of justice also implies that courts must decide cases only by strictly adhering to the procedural and other requirements established in laws, without overstepping the limits of their jurisdiction, and not exceeding their other powers (rulings of 16 January 2006 and 24 October 2007). Paragraph 1 of Article 109 of the Constitution gives rise to the duty of courts to decide cases in a fair and objective manner and to adopt reasoned and well-founded decisions (*inter alia*, the rulings of 15 May 2007, 17 September 2008, 31 January 2011, and 25 September 2012).

The administration of justice as the function of courts

The Constitutional Court's ruling of 6 December 2013

The administration of justice is a function of courts, determining the place of this branch of power in the system of institutions of state power (*inter alia*, the rulings of 21 December 1999, 13 May 2004, and 16 January 2006). When administering justice, courts must ensure the implementation of the law that is

expressed in the Constitution, laws, and other legal acts, they must guarantee the superiority of law and protect human rights and freedoms. Under the Constitution, courts are under the duty to decide cases in a fair and objective manner and to adopt reasoned and well-founded decisions (*inter alia*, the rulings of 15 May 2007, 21 January 2008, and 10 April 2009).

The principle of justice consolidated in the Constitution, as well as the provision that justice is administered by courts, means that not the adoption of a decision as such in a court, but rather the adoption of a just court decision constitutes a constitutional value; the constitutional concept of justice implies not a perfunctory and nominal justice administered by a court, not the outward appearance of justice administered by a court, but such court decisions that are not unjust according to their content; such justice that is administered by a court only in a perfunctory manner is not the justice that is consolidated in and protected and defended by the Constitution (*inter alia*, the rulings of 21 September 2006 and 25 September 2012 and the decision of 3 July 2013).

In its jurisprudence, the Constitutional Court has held on more than one occasion that it is not allowed to establish such a legal regulation that would prevent a court from adopting a just decision in a case and, thus, from administering justice where the court takes into account all important circumstances of a case, follows law, and does not violate the imperatives of justice and reasonableness stemming from the Constitution; otherwise, the powers of a court to administer justice, which stem, *inter alia*, from Article 109 of the Constitution, would be limited or even denied, and the constitutional concept of courts as the institution administering justice in the name of the Republic of Lithuania, as well as the constitutional principles of a state under the rule of law and justice, would be deviated from (*inter alia*, the rulings of 21 September 2006, 31 January 2011, and 6 December 2012).

9.1.2. The systems of courts

The systems of courts

The Constitutional Court's ruling of 28 March 2006

Courts that, under the Constitution, implement judicial power in Lithuania must be categorised as belonging not to one, but to two or more (if this, taking account of the Constitution, is established in certain laws) systems of courts.

The system of courts of general jurisdiction

The Constitutional Court's ruling of 28 March 2006

Under the Constitution, the system of courts of general jurisdiction, as a system of institutions, is comprised of courts that belong to four different levels: the first (lowest) level is comprised of district courts, the second level is comprised of regional courts, the third level is comprised of the Court of Appeal of Lithuania, and the fourth (supreme) level is comprised of the Supreme Court of Lithuania. The legislature, taking account of the Constitution, has the discretion to establish as many district and regional courts as necessary in its opinion, to determine such a number of the positions of judges in those courts that, in its opinion, is necessary in order to administer justice properly and on time, and to determine such territorial boundaries of the activity of district and regional courts that, in its opinion, are necessary in order to administer justice properly and on time.

The Constitution (*inter alia*, Paragraph 1 of Article 111 thereof) not only establishes a four-level system of courts of general jurisdiction (as a system of institutions), but also consolidates the foundations for the instance system of courts of general jurisdiction as a system of procedural steps in the judicial consideration of cases. The instance system of courts of general jurisdiction, which stems from the Constitution, implies that there must be, in accordance with the established procedure, possibilities of filing a complaint against any final act of a court of general jurisdiction of the first instance with a court of general jurisdiction of at least one higher instance. The Constitutional Court has held that the mission of the instance system of courts is to remove the possible mistakes made by courts of lower instances, to prevent any

execution of injustice, and, thus, to protect the rights and legitimate interests of a person, society, and the state (ruling of 16 January 2006). Thus, the mission of the instance system of courts of general jurisdiction is to create the preconditions for courts of higher instances to correct any mistakes of the fact (i.e. of the establishment and assessment of legally significant facts) or of the law (i.e. of the application of law), which for some reasons could be made by a court of lower instance, and to prevent the execution of injustice in any civil case, criminal case, or a case of another category considered by courts of general jurisdiction. The said correction of mistakes made by courts of lower instance and the related prevention of injustice is a *conditio sine qua non* for the trust of parties in the respective cases and for public trust in general not only in the court of general jurisdiction that considers the case in question, but also in the whole system of courts of general jurisdiction.

[...]

As such, the establishment of the four-level system of courts of general jurisdiction and the consolidation of the grounds of the instance system of courts of general jurisdiction in the Constitution does not mean that the legislature is constitutionally obliged to create, by means of a law, precisely four judicial instances (as steps in judicial proceedings and not as institutional levels), i.e. that it has to establish such a legal regulation under which it would be possible to consider any case in a district court, a regional court, the Court of Appeal of Lithuania, or the Supreme Court of Lithuania. On the contrary, in most democratic states under the rule of law, such a tradition of the instance system of courts of general jurisdiction has been developed (which is not questioned) where these courts comprise a three-step instance system: in this system, the consideration of cases is assigned to the court of first instance, the court of appeal instance (where facts that are important for the decision of a case are, *inter alia*, investigated and assessed anew), and the court of cassation instance (where no facts that are important for the decision of a case are newly established, because this has already been done by the court of appeal instance, but the issues on the application of law are decided anew). Precisely this three-step instance system of courts of general jurisdiction is established by law in Lithuania. It should be noted that, under the Constitution, the legislature has the discretion to establish (by following, *inter alia*, expediency reasons) which civil cases, criminal cases, or cases of other categories must be considered in district courts as first instance courts and which of them must be considered in regional courts as first instance courts; the legislature has also a certain degree of discretion to establish (by following, *inter alia*, expediency reasons) whether appeal proceedings must take place only in the Court of Appeal of Lithuania or whether they may also take place in regional courts. However, under the Constitution, it is not allowed to establish any such a legal regulation or to form any such case law that would eliminate the essential difference among legal proceedings in a court of first instance, legal proceedings in a court of appeal instance, and/or legal proceedings in a court of cassation instance; nor is it allowed to establish any such a legal regulation or to form any such case law that would deny the constitutional nature of the Court of Appeal of Lithuania, as a court of appeal instance, and/or the Supreme Court of Lithuania, as a court of cassation instance.

[...]

The constitutional concept of the administration of justice and that of courts of general jurisdiction imply that a law must establish such a legal regulation that every court of general jurisdiction of certain instance would perform under the law precisely such functions that are typical of courts of general jurisdiction of that instance. In this context, it should be noted that the Constitutional Court held in its ruling of 16 January 2006 that the legislature must, by means of a law, establish such powers (jurisdiction) of all courts of general jurisdiction of all instances that would be constitutionally justifiable and that the constitutional concept of the administration of justice also implies that courts must solve cases only by strictly following procedural and other requirements, which are established in laws, and by not overstepping the limits of their jurisdiction or exceeding their other powers. Thus, according to laws, every court of general jurisdiction of certain instance must perform precisely the functions that are assigned, by means of a law, to courts of general jurisdiction of the said instance.

In this context, it should be noted that it is impossible to interpret the instance system of courts of general jurisdiction that arises out of the Constitution as hierarchal one as no court of general jurisdiction

of lower instance is subordinate to any court of higher instance in the administrative or organisational aspect or in any other way: courts of general jurisdiction of first instance are subordinate neither to courts of general jurisdiction of appeal instance nor to courts of general jurisdiction of cassation instance, and the Court of Appeal of Lithuania is not subordinate to the Supreme Court of Lithuania.

The instance system of courts of general jurisdiction, which stems from the Constitution, may not be interpreted as restricting the procedural independence of courts of general jurisdiction of lower instance: even though ... under the Constitution, when adopting decisions in cases of certain categories, courts of general jurisdiction of lower instance are bound by decisions of courts of general jurisdiction of higher instance – precedents in cases of the said categories, courts of general jurisdiction of higher instance (and their judges) may not interfere in cases considered by courts of general jurisdiction of lower instance or give them any instructions, either obligatory or recommendatory, on how certain cases must be decided, etc.; from the aspect of the Constitution, such instructions (whether obligatory or recommendatory) given by certain courts (judges) would be regarded as acting *ultra vires*. Under the Constitution, case law is formed only when courts decide cases themselves. A different interpretation of the provisions of the Constitution consolidating the instance system of courts of general jurisdiction, as well as a legal regulation based on such different interpretation of the provisions of the Constitution, would create the preconditions for courts of general jurisdiction of higher instance (or their judges) to assume such functions that are not envisaged for them and such powers that are not established in the Constitution, would deny the independence of courts, which is consolidated in the Constitution, would violate the provision of Paragraph 2 of Article 109 of the Constitution, whereby, when administering justice, judges and courts are independent, and the provision of Paragraph 3 of this article, whereby, when considering cases, judges obey only the law. It should also be noted that the giving of obligatory or recommendatory instructions to courts of general jurisdiction of lower instance on how certain cases must be decided etc. would also restrict the possibilities of courts of general jurisdiction of higher instance to independently and impartially review, where necessary, certain cases under appeal and cassation procedure.

Paragraph 4 of Article 111 of the Constitution provides that the formation and competence of courts is established by the Law on Courts. Thus, the Constitution not only obliges the legislature to lay down, by means of a law, the establishment and competence of all the courts of the Republic of Lithuania (thus, including the status, formation, exercise of powers (activity), and guarantees of courts of general jurisdiction, the status of judges of these courts, etc.), which are specified in Paragraph 1 of Article 111 of the Constitution, but also *expressis verbis* consolidates the title of this law – the Law on Courts. At the same time, it needs to be noted that, in itself, such a constitutional legal regulation does not mean that certain relationships connected with the aforesaid relationships may not in general be regulated also by means of other laws. However, it should be emphasised that, when regulating the said relationships by means of a law, the legislature must pay regard to the Constitution and, *inter alia*, the constitutionally consolidated foundations of the instance system of courts of general jurisdiction.

Specialised courts

The Constitutional Court's ruling of 28 March 2006

Paragraph 2 of Article 111 of the Constitution provides that, for the consideration of administrative, labour, family, and cases of other categories, specialised courts may be established. It should also be mentioned that no courts with extraordinary powers may be established in the Republic of Lithuania in time of peace (Paragraph 3 of Article 111 of the Constitution).

It should be noted that, when regulating the relationships connected with the establishment and activity of specialised courts, the legislature is bound by the provisions of the Constitution that establish the grounds for the instance system of courts. In this context, it should be emphasised that, as the Constitutional Court held in its ruling of 16 January 2006, the Constitution, *inter alia*, Paragraphs 1 and 2 of Article 111 thereof (but not exclusively these provisions of the Constitution), consolidates the instance system of courts. The Constitution, if its provisions are interpreted in a systemic manner, implies that the instance system is

established not only for courts of general jurisdiction, but also for specialised courts, which are established under Paragraph 2 of Article 111 of the Constitution.

The legislature, while paying regard to the Constitution, has broad discretion to decide (by following, *inter alia*, expediency reasons) on the establishment of specialised courts for consideration of particular categories of cases. The legislature also has broad discretion in establishing the system of specialised courts assigned to the consideration of each category of cases, the number of positions of judges in those courts and their relations with courts of general jurisdiction and with specialised courts assigned to the consideration of cases of other categories, *inter alia*, the fact whether certain specialised courts, assigned to the consideration of cases of certain categories, would constitute an autonomous system, which would be separated from the system of courts of general jurisdiction and from the system of specialised courts assigned to the consideration of cases of other categories, or whether it would somehow be linked with such systems (one of them) in organisational, procedural, or some other aspect. It should be noted that the instance system of specialised courts (established under Paragraph 2 of Article 111 of the Constitution) may have certain particularities compared with the instance system of courts of general jurisdiction.

However, under the Constitution, the legislature may not create any such system or systems (if there are more than one category of cases for the consideration of which individual specialised courts are created) of specialised courts (established under Paragraph 2 of Article 111 of the Constitution) that would replace the system of courts of general jurisdiction imperatively established in the Constitution and would take most of the functions of the system of courts of general jurisdiction.

It should be emphasised that the imperatives (which stem from the Constitution and were discussed in this ruling of the Constitutional Court) of both the activity of courts of general jurisdiction and the legal regulation governing such activity are also *mutatis mutandis* applicable to the activity of specialised courts (established under Paragraph 2 of Article 111 of the Constitution) and the legal regulation governing their activity. This can be said about such requirements arising out of the Constitution that are related, *inter alia*: to ensuring the possibility of filing a complaint with a court of at least one higher instance against a final court act in accordance with the established procedure; to developing uniform case law (based on the maxim that the same (analogous) cases must be decided in the same way) and the predictability of court decisions arising from this, thus, also to the continuity of the jurisprudence of courts; to the fact that the existing precedents are binding on courts themselves (*inter alia*, on courts of the supreme instance); to the modification of case law and the creation of case law precedents only when this is unavoidably and objectively necessary and by arguing it properly (clearly and rationally) in all cases; to the obligation of every court of a certain instance to perform, pursuant to laws, precisely such functions that are assigned to the courts of that instance and not to overstep the limits of their jurisdiction or exceed their other powers; to the fact that courts of lower instance are not subordinate in an organisational or another manner to any court of higher instance, as well as to procedural independence and the formation of case law when courts decide cases by themselves, etc.

It should also be emphasised that the legislature, when establishing specialised courts, must also establish a procedure under which jurisdictional competition between specialised courts and courts of general jurisdiction, as well as between specialised courts assigned for the consideration of cases of a certain category and specialised courts assigned for the consideration of cases of a different category (if there is more than one category of cases for the consideration of which individual specialised courts are established) would be decided. Moreover, the legislature must establish such a legal regulation that would not only ensure the formation of uniform case law in any individual systems of specialised courts assigned to the consideration of cases of a certain category, but would also not allow inconsistencies and irregularities to appear between specialised courts and courts of general jurisdiction, as well as between specialised courts assigned to the consideration of cases of a certain category and specialised courts assigned to the consideration of cases of a different category (if there is more than one category of cases for the consideration of which individual specialised courts are established). The inconsistency and irregularity of case law between specialised courts and courts of general jurisdiction, as well as between specialised courts assigned to the consideration of cases of a certain category and specialised courts assigned to the

consideration of cases of a different category (if there is more than one category of cases for the consideration of which individual specialised courts are established), could be avoided, *inter alia*, by means of such a legal regulation (establishing the jurisdiction of courts) where cases of certain categories may be considered only in clearly specified courts of general jurisdiction or specialised courts and may not be considered in both courts of general jurisdiction and specialised courts, or in both specialised courts assigned to the consideration of cases of a certain category and specialised courts assigned to the consideration of cases of a different category (if there is more than one category of cases for the consideration of which individual specialised courts are established).

The systems of courts

The Constitutional Court's ruling of 9 May 2006

Courts that, under the Constitution, implement judicial power in Lithuania must be categorised as belonging not to one, but to two or more (if this, taking account of the Constitution, is established in certain laws) systems of courts. Under the Constitution and laws, there are three systems of courts in Lithuania at present: (1) the Constitutional Court carries out constitutional judicial control; (2) the Supreme Court of Lithuania, the Court of Appeal of Lithuania, regional courts, and district courts, which are specified in Paragraph 1 of Article 111 of the Constitution, constitute the system of courts of general jurisdiction; (3) under Paragraph 2 of Article 111 of the Constitution, for the consideration of administrative, labour, family, and cases of other categories, specialised courts may be established according to the law; one system of specialised courts, namely, administrative ones, which is composed of the Supreme Administrative Court of Lithuania and regional administrative courts, is established and is functioning at present (rulings of 13 December 2004, 16 January 2006, and 28 March 2006).

Links among the systems of courts

The Constitutional Court's ruling of 6 June 2006

... there are significant links between courts of general jurisdiction and specialised courts (established under Paragraph 2 of Article 111 of the Constitution) on the one hand and, on the other hand, the Constitutional Court, as the institution of constitutional justice, *inter alia*: every court of general jurisdiction (its judge) and every specialised court (its judge), as a petitioner, has the right to initiate constitutional justice cases at the Constitutional Court on the grounds established in the Constitution (Paragraphs 1, 2, and 3 of Article 106 and Paragraph 2 of Article 110); all courts of general jurisdiction – the Supreme Court of Lithuania, the Court of Appeal of Lithuania, regional courts, and district courts – as well as specialised courts (Supreme Administrative Court of Lithuania and regional administrative courts), are bound by the fact that, under Article 107 of the Constitution, the decisions on the issues assigned to the competence of the Constitutional Court are final and not subject to appeal; all courts of general jurisdiction and specialised courts are bound by the official constitutional doctrine, which is formed in the jurisprudence of the Constitutional Court, etc. However, as regards the organisational and administrative aspects, the said judicial systems – the Constitutional Court, when carrying out constitutional judicial control, as well as courts of general jurisdiction and specialised courts (established under Paragraph 2 of Article 111 of the Constitution) – are separated in the Constitution.

9.1.3. The independence of judges and courts and the guarantees of their independence

The independence of judges and courts

The Constitutional Court's ruling of 21 December 1999

Paragraph 2 of Article 109 of the Constitution prescribes: “When administering justice, judges and courts shall be independent.”

The independence of judges and courts is one of the essential principles of a democratic state under the rule of law. The role of the judiciary in such a state means that, when administering justice, courts must

ensure the implementation of the law that is expressed in the Constitution, laws, and other legal acts; they must guarantee the superiority of law and protect human rights and freedoms.

It needs to be noted that the independence of judges and courts is not an objective in itself – it is a necessary condition of the protection of human rights and freedoms. Paragraph 1 of Article 30 of the Constitution provides that a person whose constitutional rights or freedoms are violated has the right to apply to a court. Paragraph 2 of Article 31 of the Constitution consolidates the right of a person charged with committing a crime to a public and fair hearing of his/her case by an independent and impartial court. Therefore, the fact that independence is not a privilege but one of the most important duties of judges and courts, which stems from the human right guaranteed in the Constitution to have an impartial arbiter of a dispute and which is a necessary condition for an impartial and fair consideration of a case, is the most important criterion that must be followed when assessing the independence of judges and courts (ruling of 6 December 1995).

Taking account of the striving, enshrined in the Preamble to the Constitution, for an open, just, and harmonious civil society and a state under the rule of law, Article 5 of the Constitution, as well as the norms of other articles thereof establishing the separation of powers, it is possible to distinguish two inseparable aspects of the principle of the independence of judges and courts.

This principle, first of all, means the independence of both judges and courts that administer justice. Under Article 109 of the Constitution, when considering cases, judges are independent and obey only the law. Paragraph 1 of Article 114 of the Constitution provides that interference by any institutions of state power and governance, members of the Seimas or other officials, political parties, political or public organisations, or citizens with the activities of a judge or court is prohibited and leads to responsibility provided for by law. The procedural independence of judges is a necessary condition for an impartial and fair consideration of a case.

On the other hand, judges and courts are not sufficiently independent if the independence of courts as the system of the institutions of the judiciary is not ensured. According to the principle of the separation of powers, all branches of power are autonomous, independent, and capable of counterbalancing one another. The judiciary, being independent, may not be dependent on the other branches of power also because of the fact that it is the only branch of power formed on a professional, but not a political basis. The judiciary may implement its function, which is the administration of justice, only while being autonomous and independent of the other branches of power.

The fact that the judiciary is fully fledged and independent implies its self-governance. The self-governance of the judiciary also includes the organisation of the work of courts and the activities of the professional corps of judges.

The organisational independence of courts and their self-governance are the main guarantees of the actual independence of the judiciary. The constitutional duty of other state institutions is to respect the independence of courts, which is established in the Constitution. It needs to be noted that the activities of courts are guaranteed by the Constitution, as well as by laws and other legal acts that are in conformity with the Constitution. The state is under the duty to create proper work conditions for courts. However, this does not mean that it is allowed, in the course of establishing particular powers of other state institutions as regards their relationships with the judiciary, to deny both the separation of powers established in the Constitution and the essence of the judiciary as a fully fledged branch of power, which acts independently from other branches of power.

While ensuring the independence of judges and courts, it is very important to clearly separate the activity of courts from that of the executive. The Constitution prohibits the executive from interfering with the administration of justice, from exerting any influence on courts or from assessing the work of courts regarding the consideration of cases, let alone giving instructions as to how justice must be administered. The supervision of courts and the application of disciplinary measures to judges must be organised in such a manner that the actual independence of judges would not be undermined.

Under the Constitution, the activity of courts is not and may not be considered an area of the administration by any institution of the executive. Only the powers designated to create conditions for the

work of courts may be granted to institutions of the executive. Courts are not accountable for their activities in administering justice to any other state institutions or any officials. It is only an independent institutional system of courts that may guarantee the organisational independence of courts and the procedural independence of judges.

The material basis of the organisational independence of courts is their financial independence of any decisions of the executive. It needs to be noted that the financial independence of courts is ensured by such a legal regulation where finances for the system of courts and every court are allocated in the state budget that is approved by means of a law. The guarantee of the organisational independence of courts is one of essential conditions for ensuring human rights.

Judges are also obligated to be independent by their oath that they must take before entering office under Paragraph 6 of Article 112 of the Constitution. Judges take an oath to be faithful to the Republic of Lithuania, to administer justice only according to the law, to defend human rights, freedoms, and legitimate interests, to act honestly and humanely all the time, and to never let their conduct discredit the name of judges.

Under Article 115 of the Constitution, the judges of the courts of the Republic of Lithuania are released from their duties according to the procedure established by law when their conduct discredits the name of judges, and upon the entry into effect of court judgments convicting them. Articles 74 and 116 of the Constitution also provide that for a gross violation of the Constitution or a breach of the oath, or when they are found to have committed a crime, the President and justices of the Supreme Court, as well as the President and judges of the Court of Appeal, may be removed from office by the Seimas according to the procedure for impeachment proceedings. The conduct of a judge – both related to the direct performance of his/her office and not related to his/her official duties – should not raise any doubts about his/her impartiality and independence.

The qualification of judges is another guarantee that judges will administer justice in a proper manner: only persons with high legal qualification and considerable life experience may be appointed as judges. Their reputation must be impeccable.

This means that judges are subject to special professional and ethical requirements. Judges must bear great responsibility for how they administer justice, i.e. perform the obligation established for them in the Constitution.

The independence of judges and courts (Article 109 of the Constitution)

The Constitutional Court's ruling of 12 July 2001

Paragraph 1 of Article 109 of the Constitution prescribes that, in the Republic of Lithuania, justice is administered only by courts. The function of the administration of justice determines the independence of judges and courts. Paragraphs 2 and 3 of Article 109 of the Constitution provide that, when administering justice, judges and courts are independent and that, when considering cases, judges obey only the law. Thus, a judge can administer justice only while being independent of parties to the case, state institutions, officials, political and public associations, natural and legal persons.

When analysing the principle of the independence of judges and courts, it must be noted that independence is not a privilege, but one of the most important obligations of judges and courts, which stems from the right of a person, which is guaranteed in the Constitution, to an independent and impartial arbiter of a dispute. All state institutions must respect and ensure this right of a person guaranteed by the Constitution. This circumstance must be taken into account when guarantees of the independence of judges and courts are assessed.

The independence of judges is ensured by establishing the inviolability of the term of their office, the inviolability of the person of a judge, the guarantees of a social (material) nature of a judge, by consolidating the self-governance of fully fledged judicial power and its financial and technical provision (rulings of 6 December 1995, 18 April 1996, 19 December 1996, 5 February 1999, 21 December 1999, and 21 December 1999 and the decision of 12 January 2000).

[...]

The principle of the independence of judges and courts, which is enshrined in the Constitution, means that the legislature is under the duty to provide for such guarantees of the independence of judges and courts that would ensure the impartiality of courts in adopting decisions and that would not permit anyone to interfere with activities of judges or courts when they administer justice.

The specific function of courts and the principle of the independence of judges and courts, which are consolidated in the Constitution, also determine the legal status of judges. It needs to be noted that the judiciary is formed on a professional, but not on a political basis. “According to the duties performed, judges may not be deemed to be state servants. No one may demand that they follow a certain political guideline. The judicial practice (case law) is formed only by courts while applying the norms of law. Judges ensure human rights and freedoms in that they administer justice on the grounds of the Constitution and laws” (ruling of 21 December 1999).

[...]

The principle of a state under the rule of law, the separation of powers, and the independence of judges and courts are not objectives in themselves. Their meaning is disclosed by the protection of human rights, the ensuring of social harmony, and the legal solution of conflicts arising in society. Judges consider cases that involve the interests of an employee and an employer, a citizen and an official, an entity indulged in commercial activities and a consumer, a person and the state. It is especially important to guarantee impartial judicial protection against unlawful actions of state institutions and officials. This once again confirms the importance of guarantees for the independence of judges and courts.

In addition, the Constitutional Court notes that the system of the guarantees of the independence of judges and courts does not create any preconditions on the grounds of which judges could evade the proper fulfilment of their duties, investigate cases in a negligent manner, act unethically with persons taking part in a case, or violate human rights and dignity. Judges must protect the honour and prestige of their profession. Therefore, the system of self-regulation and self-governance of the judiciary must ensure that judges perform their duties properly and that every unlawful or unethical conduct of a judge be properly assessed.

The incompatibility of the office of a judge with another office or employment as a guarantee of the independence of judges (Paragraph 1 of Article 113 of the Constitution)

The Constitutional Court's ruling of 12 July 2001

Paragraph 1 of Article 113 of the Constitution consolidates the incompatibility of the office of a judge with any other elective or appointive office, as well as with employment in any business, commercial, or private establishment or enterprise. Judges may receive only the remuneration of a judge paid from the state budget. Judges may not receive any remuneration other than the remuneration established for them and payment for educational or creative activities.

The incompatibility of the post of a judge with another office or employment is determined by the special legal situation of a judge, as well as the judiciary, as a branch of state powers. The established prohibition is aimed at ensuring the independence and impartiality of judges, which are necessary conditions for the implementation of justice. At the same time, it needs to be noted that the incompatibility of the office of a judge with any other office or employment implies the duty of the state to establish such remuneration and social guarantees of judges that would be in line with the dignity of judges and their professional status.

The prohibition on interfering with the activity of judges or courts (Paragraph 1 of Article 114 of the Constitution)

The Constitutional Court's ruling of 12 July 2001

Paragraph 1 of Article 114 of the Constitution prescribes: “Interference by any institutions of state power and governance, Members of the Seimas or other officials, political parties, political or public

organisations, or citizens with the activities of a judge or court shall be prohibited and shall lead to liability provided for by law.”

The prohibition against the interference with the activities of judges or courts established in Paragraph 1 of Article 114 of the Constitution is aimed at ensuring the independence and impartiality of judges. Courts are able to administer justice only when judges can consider cases impartially, by taking account of the circumstances of cases and the requirements of laws. It needs to be noted that, under the Constitution, institutions of state power and administration are not only prohibited from exerting influence on judges and courts – they are also obligated to ensure the independence of judges and courts.

The immunity of judges as a guarantee of the independence of judges (Paragraph 2 of Article 114 of the Constitution)

The Constitutional Court's ruling of 30 May 2003

The immunity of judges is one of the guarantees (consolidated in the Constitution) of the independence of judges. Paragraph 2 of Article 114 of the Constitution provides that judges may not be held criminally liable or be detained, or have their liberty restricted otherwise, without the consent of the Seimas or, in the period between the sessions of the Seimas, without the consent of the President of the Republic of Lithuania.

The interaction between the judiciary and other branches of state power

The Constitutional Court's ruling of 9 May 2006

The autonomy and independence of judicial power does not mean that it and other state powers – legislative power and executive power – may not cooperate. The Constitutional Court has held that when the general functions and tasks of the state are being accomplished, there exists interfunctional partnership, as well as reciprocal control and balance, among state institutions (rulings of 10 January 1998 and 21 April 1998).

It should be emphasised that the interaction among the branches of state power may not be treated as their conflict or competition; thus, the checks and balances that the judicial branch (institutions thereof) and other branches of state power (institutions thereof) have towards each other may not be seen as the mechanisms of the opposition of the branches of power. The model of reciprocity among state powers consolidated in the Constitution is also described by the reciprocal control and balance of the branches of state power (institutions thereof); such reciprocal control and balance does not allow a certain branch of state power to dominate in respect of another branch of state power (or in respect of other branches of state power); the said model of reciprocity is also described by cooperation among the branches of state power, of course, where such cooperation does not overstep the limits established in the Constitution, i.e. without interfering with the implementation of the powers of another branch of state power.

The inviolability of the term of powers as a guarantee of the independence of judges

The Constitutional Court's ruling of 9 May 2006

One of the guarantees of the independence of judges, which is consolidated in the Constitution, is the guarantee of the term of their powers (rulings of 6 December 1995, 21 December 1999, and 12 July 2001). Only an independent court, i.e. only such a court the judges of which are guaranteed the inviolability of the term of their powers, may be regarded as a court that administers justice as required by the Constitution. The guarantee of the inviolability of the term of powers of a judge is also important because of the fact that a judge, whatever political forces are in power, must remain independent and must not adjust to the possible change of political forces. The situations when a judge may be released from duties, as well as the grounds for his/her release from duties, are consolidated in Article 115 of the Constitution (as well as Articles 74 and 116 of the Constitution, which provide for the possibility of dismissing justices of supreme and high courts under impeachment proceedings). It needs to be emphasised that this list of the grounds for

releasing judges from duties is a comprehensive (exhaustive) one – it may not be amended or supplemented by means of a law.

[...]

It should be noted that the principle of the independence of judges, which is consolidated in the Constitution, implies only such a legislative regulation of the term of powers of judges where, when appointing a judge, he/she would know his/her term of powers (until the time established by means of a law or until he/she reaches the pensionable age established by means of a law). Thus, the term of powers of a judge must not depend on any future free-discretion decisions adopted by such state power institutions that have appointed him/her as a judge.

The legal regulation governing the relationships connected with the remuneration of judges (Paragraph 1 of Article 113 of the Constitution)

The Constitutional Court's decision of 8 August 2006

... The notion “remuneration of judges” includes all payments paid to a judge from the state budget (decision of 12 January 2000). Under the Constitution, the remuneration of judges must be established by means of a law, its amount, as well as the material and [other] social guarantees established for judges, must be such that they would be in line with the constitutional status of judges and their dignity, the remuneration of judges, the material and social guarantees established for them may be differentiated according to clear criteria that are known *ex ante* and are not related to the administration of justice when cases are decided (for example, according to the length of time during which a person works as a judge), and the remuneration of judges may not depend upon the results of their work. It should be noted that, as the Constitutional Court has emphasised in its rulings more than once, the Constitution prohibits the reduction of the remuneration and [other] social guarantees of judges; any attempts to reduce the remuneration of judges or their other social guarantees, or any limitation upon the financing of courts should be treated as an encroachment upon the independence of judges and courts (rulings of 6 December 1995 and 21 December 1999, the decision of 12 January 2000, and the rulings of 12 July 2001 and 28 March 2006).

The independence of judges and courts

The Constitutional Court's ruling of 27 November 2006

The independence and impartiality of judges and courts are ensured by consolidating, in the Constitution and laws, the independence of the system of courts from the legislature and the executive (institutional independence), by consolidating the procedural independence of judges, the organisational self-dependence and self-governance of courts, the status of judges, the inviolability of the person of a judge, the immunities of judges, the inviolability of the duration of the term of office of judges, the social (material) guarantees of judges, and by consolidating the prohibition against any interference with the activity of judges or courts by state institutions, members of the Seimas, other officials, political parties, political and public organisations, as well as citizens. The independence and impartiality of judges and courts are also ensured by means of other guarantees established in the Constitution and laws.

The protection of the remuneration and other social guarantees of judges (Article 109, Paragraph 4 of Article 111, and Paragraph 1 of Article 113 of the Constitution)

The Constitutional Court's ruling of 22 October 2007

... as the Constitutional Court held in its ruling of 12 July 2001, a judge, who is obligated to consider conflicts arising in society as well as those between a person and the state, must be not only highly professionally qualified and of impeccable reputation, but also materially independent and feel secure as to his/her future. The imperative of the constitutional protection of the remuneration and other social (material) guarantees of judges stems from the principle of the independence of judges and courts, which is consolidated in the Constitution (*inter alia*, Article 109 thereof); through this principle, attempts

are made to protect judges administering justice against both any influence of the legislative and executive branches and any influence of other state establishments and officials, political and public organisations, commercial and economic structures, as well as other legal and natural persons. In its ruling of 12 July 2001, the Constitutional Court also noted that the state has the duty to establish such salaries for judges that would be in conformity with the status of the judiciary and judges, with the functions performed by them, as well as with their responsibility.

The social (material) guarantees of the principle of the independence of judges that stem from the Constitution (which, actually, are also consolidated in the law of other democratic states, as well as in various international acts) mean that the state has the duty to ensure such social (material) provision for judges that would be in conformity with the status of judges while they are in office, as well as upon the expiry of their term of office, i.e. their term of powers (ruling of 21 December 1999). Under the Constitution, the material and social guarantees established for judges must be such that they would be in line with the constitutional status of judges and their dignity (decision of 8 August 2006).

Thus, it should be held that the legislature must establish such a legal regulation that would ensure the independence of judges and courts, *inter alia*, the social (material) guarantees of judges not only when they are in office, but also after their powers cease. In doing so, the legislature must pay regard to the norms and principles of the Constitution. When the powers of a judge cease, his/her social (material) guarantees may be varied ones, *inter alia*, payments paid periodically, as well as one-off payments, etc. The constitutional grounds for establishing such guarantees is the exceptional constitutional status of judges, which is determined by the function of the administration of justice; therefore, the said guarantees may only depend upon such circumstances that are linked with the constitutional status of judges, but they may not be regarded as replacing other social (material) guarantees that must be ensured for former judges on other grounds, including those that are common to all working persons. It also needs to be emphasised that the social (material) guarantees of judges after their powers cease must be real and not merely nominal.

[...]

... if the legislature establishes such a social (material) guarantee of judges after their powers cease as the pension of judges, it, having regard to the Constitution, may also establish cases where the pension of judges (which is related to the constitutional status of judges) is not granted to former judges and/or where granted state pensions of judges are no longer paid to former judges.

It needs to be emphasised in particular that all such cases must be based on the Constitution; while establishing, by means of a law, cases where the pension of judges is not granted to a former judge, it is necessary to take account, *inter alia*, of the constitutional grounds of the cessation of the powers of such a judge. Otherwise, the constitutional principle of the independence of judges and courts, which implies the social (material) guarantees of judges after their powers cease, would be disregarded and Article 109 of the Constitution would be violated.

Article 109 of the Constitution would equally be violated where a granted state pension of judges is no longer paid to a former judge in the absence of constitutionally justifiable grounds.

... if the legislature consolidates such a social (material) guarantee of judges after their powers cease as the pension of judges, this guarantee is defended not only under Article 109 of the Constitution, but also under Article 52 of the Constitution.

The principle of the equal legal status of judges; the differentiation of the social (material) guarantees of judges; the imperative of the reality of the social (material) guarantees of judges

The Constitutional Court's ruling of 22 October 2007

... One of the important aspects of the independence of judges as consolidated in the Constitution is that, while administering justice, all judges have an equal legal status, *inter alia*, from the aspect that no different guarantees of the independence of judges while administering justice (deciding cases) may be established; while administering justice, judges are not and may not be subordinate to any other judge or to the president of any court (*inter alia*, of the court where they work, as well as of any court of a higher level or instance); on the other hand, the principle of the equal legal status of judges does not mean that the

material and social guarantees of judges may not be differentiated according to clear criteria that are known *ex ante* and are not related to the administration of justice when cases are decided (for example, according to the length of time during which a person works as a judge) (ruling of 9 May 2006 and the decision of 8 August 2006). The principle of the equal legal status of judges, which stems from the Constitution, may also not be interpreted as not permitting an additional payment for the judges – the heads of courts (their deputies, chairpersons of divisions, etc.) who perform additional functions for organisational work that they carry out, since supplementary work must be paid for additionally.

[...]

The equal status of judges while administering justice, which stems from the Constitution, should be interpreted by taking account of the fact that, under the Constitution, the system of courts of general jurisdiction, as a system of institutions, is comprised of courts that belong to four different levels: the first (lowest) level is comprised of district courts, the second level is comprised of regional courts, the third level is comprised of the Court of Appeal of Lithuania, and the fourth (supreme) level is comprised of the Supreme Court of Lithuania. ... Moreover, interpreting the equal status of judges when they administer justice, where the said status stems from the Constitution, account must be taken of the fact that, under the Constitution, courts are classed as belonging not to one, but to two or more (if that, while having regard to the Constitution, is established in laws) systems of courts (... there are three systems of courts at present).

The classification of courts (which arises from the Constitution) by which courts belong not to one but to several (at present – three) systems of courts, as well as the division of the system of courts of general jurisdiction and specialised courts (established under Paragraph 2 of Article 111 of the Constitution) into levels, implies that the legislature has the powers to differentiate the social (material) guarantees of judges (remuneration, as well as guarantees that are established for (applied to) judges after their powers cease). ... judicial power is formed on a professional basis. It is universally recognised (not exclusively in Lithuania) that the dominant principle of the formation of the corps of judges of courts of higher level is the principle of the professional career of judges when judges are promoted after they are released from previous duties and appointed as judges of courts of higher level (even though the said principle must not be made absolute in order not to create preconditions for the system of courts to become too closed, to become subjected to routine, etc.) (ruling of 9 May 2006). The professional career of judges is inseparably related to the institution of the promotion of judges, which is consolidated in Paragraph 4 of Article 112 of the Constitution. While deciding on the promotion of judges, *inter alia*, their qualification – professional preparation – is assessed (ruling of 9 May 2006). Thus, the implementation of the principle of the professional career of judges (as mentioned before, without making it absolute) is one of the conditions making it possible to ensure that persons with professional qualification as high as possible would be appointed as judges of courts of higher levels, thus, also to ensure that justice would be administered in such a way that is provided for in the Constitution, that human rights and freedoms, as well as other constitutional values, would be protected and defended properly, and that the law expressed in the Constitution, as well as in laws and other legal acts that are not in conflict with the Constitution, would be implemented. Thus, judges must also have material incentives to pursue a professional career. Consequently, the legislature not only may, but also must, differentiate the social (material) guarantees of judges according to the fact that, in establishing such guarantees, account is taken of the court system and the court level where judges work; the constitutional concept of the judiciary as the branch of state power formed on a professional basis implies, *inter alia*, that, if the remuneration of judges of courts of different levels, as well as guarantees that are established for (applied to) judges after their powers cease, were equalised completely, not only the fact that, under the Constitution, courts are classed as belonging not to one, but to several (at present – three) systems of courts, that the system of courts of general jurisdiction, as a system of institutions, is comprised of courts that belong to four different levels, and that the systems of specialised courts (at present – administrative courts), which are established under Paragraph 2 of Article 111 of the Constitution, may also be divided into levels, would be disregarded, but also there would be no material incentives (even if there were other incentives) for judges to pursue the professional career.

The principle of the equal legal status of judges, which stems from the Constitution, implies that judges of the same system of courts and judges of courts of the same level are equal while administering justice (deciding cases) not only according to their powers and their non-subordination to any other judge or president of any court (*inter alia*, of the court in which they work, as well as of the court of higher level or instance), their responsibility and immunities, the restrictions on their activities and the limitation on their remuneration provided for in Article 113 of the Constitution, but also according to the fact that they must be ensured equal workload; thus, judges of the same system of courts and judges of courts of the same level must be paid for work accordingly without discriminating any of them and without giving privileges to any of them, and the respective social (material) guarantees, which may not be discriminatory and may not be privileges, must be established for them.

It also needs to be noted that, as mentioned before, the social (material) guarantees of judges may be differentiated (while having regard to the Constitution) under criteria that are not related to the administration of justice when deciding cases, for example, according to the length of time during which a person works as a judge. However, this does not at all mean that the criterion of the length of time during which a person works as a judge may be replaced by another, essentially different criterion (for example, if laws establish a certain calendar date (naming it directly, or relating to any legal fact, such as, for example, the entry into force of a certain legal act) and if a person begins to work as a judge or his/her powers cease from that date, certain social (material) guarantees that are established for (applied to) him/her would be different from those that are established for (applied to) other judges of courts of the same system and of courts of the same level (of courts of general jurisdiction and specialised courts, which are established under Paragraph 2 of Article 111 of the Constitution)). Thus, the remuneration of judges of courts of the same system and of the same level may not be differentiated (also by applying law) according to when the remuneration of a certain amount of judges was established (*inter alia*, according to whether a person began to work as a judge of the respective court before establishing the remuneration of a certain amount of a judge of that court, or afterwards). Consequently, under the Constitution, it is not allowed to establish such a legal regulation (neither general nor individual) where, with regard to persons who are appointed as judges of a certain court, a different (lower or higher) remuneration would be established from that of judges who already work in the said court; if such practice of the application of law came into being, it would be impossible to substantiate it constitutionally.

The provision that ... social (material) guarantees of judges may be differentiated (having regard to the Constitution) according to the length of time during which a person works as a judge may not be interpreted as meaning that the criterion of the length of time during which a person works as a judge is the only criterion of the said differentiation. In the case of the remuneration of judges, as well as in the case of the social (material) guarantees of judges after their powers cease (and, thus, in the case of the pensions of judges), account must be taken of the fact that the Constitution gives rise to such classification of courts by which courts belong not to one, but, rather, to several (at the moment – three) systems of courts, as well as of the fact that the system of courts of general jurisdiction and the system of specialised courts (established under Paragraph 2 of Article 111 of the Constitution), as systems of institutions, are of several levels.

It has been held in this ruling of the Constitutional Court that the principle of the equal legal status of judges may not be interpreted as not permitting an additional payment for the judges – the heads of courts (their deputies, chairpersons of divisions, etc.) who perform additional functions for organisational work that they carry out. However, it needs to be emphasised that the said constitutional principle hardly implies that, in a certain court, the activity of the judges – heads of courts (their deputies, chairpersons of divisions, etc.) who perform additional functions may be limited only to such organisational work that is not related to the administration of justice, i.e. with the decision of cases, and that they may receive the remuneration of a judge only for such organisational work.

The principled provision that the remuneration of judges of courts of the same system and of the same level may not be differentiated (also by applying law) according to when the remuneration of a certain amount of judges was established (*inter alia*, according to whether the person began to work as a judge of the respective court before establishing the remuneration of a certain amount of a judge of that court, or

afterwards) is also *mutatis mutandis* applicable to other social (material) guarantees of judges, *inter alia*, those that are established for (applied to) judges after their powers cease. The said guarantees also may not be reduced, let alone altogether denied, in cases where their system is reorganised. In addition, the imperative of the reality of the social (material) guarantees of judges stems from the Constitution. The social (material) guarantees of judges that are established for (applied to) judges after their powers cease (in particular, if such guarantees are linked with certain periodic payments, such as pensions) could become (if an economic or social situation changed) not only unreal, but also nominal, thus, fictitious in cases where exactly such guarantees are applied to judges whose powers ceased that were established at a given time and not reviewed with respect to these judges, while other judges of courts of the same system and the same level, whose powers will expire later, are granted greater respective guarantees (in view of a changing economic or social situation). In this context, it needs to be noted that the provision of the review of the social (material) guarantees is applicable not only to judges, but also to other members of society: it has been held in this ruling of the Constitutional Court that the social orientation of the State of Lithuania, which is consolidated in the Constitution, obliges the state to pay regard to social (material) guarantees and other guarantees that stem not only from Article 52 of the Constitution, but also from other provisions of the Constitution (*inter alia*, from Paragraph 2 of Article 30, Articles 38, 39, and 41, Paragraph 1 of Article 51 and Article 146 thereof), as well as from the imperative of reality; thus, the social orientation of the State of Lithuania includes the obligation to revise once established (and applied) guarantees of the social (material) nature (to increase their sizes) in particular if an economic or social situation changes in such a way that the said established (and applied) guarantees depreciate considerably, let alone become nominal in general (in this case, it is also necessary to have in mind the reservation (which is specified in this and other rulings of the Constitutional Court) regarding the proportional and temporary reduction of payments when this is necessary for the protection of other constitutional values).

The grounds for releasing judges from duties (cessation of powers) and the influence of such grounds on establishing and applying the social guarantees of judges after their powers cease (Articles 108 and 115 of the Constitution)

The Constitutional Court's ruling of 22 October 2007

The establishment (and application) of the social (material) guarantees of judges after their powers cease must be based on the Constitution. In this context, it needs to be noted that the Constitution establishes the grounds for releasing judges from their duties. For instance, under Article 115 of the Constitution, the judges of courts of general jurisdiction and specialised courts (established under Paragraph 2 of Article 111 of the Constitution) are released from their duties according to the procedure established by law in the following cases: of their own will (Item 1); upon the expiry of the term of powers, or upon reaching the pensionable age established by law (Item 2); due to their state of health (Item 3); upon election to another office, or upon transfer, with their consent, to another place of work (Item 4); when their conduct discredits the name of judges (Item 5); upon the entry into effect of court judgments convicting them (Item 6); under Article 108 of the Constitution, the powers of a justice of the Constitutional Court cease: upon the expiry of the term of powers (Item 1); upon his/her death (Item 2); upon his/her resignation (Item 3); when he/she is incapable of holding office due to the state of his/her health (Item 4); when the Seimas removes him/her from office in accordance with the procedure for impeachment proceedings (Item 5). Under Articles 74 and 116 of the Constitution, the President and justices of the Supreme Court, the President and judges of the Court of Appeal, and, under Article 74 of the Constitution, also the President and justices of the Constitutional Court, who grossly violate the Constitution or breach their oath, or are found to have committed a crime, may be removed from office by the Seimas according to the procedure for impeachment proceedings.

The Constitution consolidates the final list of grounds for releasing judges from their duties (i.e. the cessation of powers) and this list must not be expanded by means of laws or other legal acts (ruling of 27 November 2006).

On the other hand, it is obvious that the powers of judges may cease (expire) on various constitutional grounds.

It needs to be emphasised that the Constitution does not oblige the legislature to establish such a legal regulation where the time of the expiry of the powers of judges, which is established in the Constitution or laws, would coincide with the time when a judge reaches the pensionable age established by law: it is also allowed to establish, by means of a law, such a legal regulation whereby the term of powers of a judge may expire before he/she reaches the pensionable age established under the law, as well as such a legal regulation whereby the term of powers of a judge may expire after he/she reaches the pensionable age established under the law. While establishing the social (material) guarantees of judges after their powers cease, it is necessary to pay regard to that. In this context, it needs to be noted that two legal facts – the expiry of the term of powers of judges and the fact that a judge reaches the pensionable age established under the law – are considered in Item 2 of Article 115 of the Constitution as equal alternatives, thus, as equal grounds for the cessation of the powers of a judge; it also needs to be mentioned that Article 108 of the Constitution does not relate the cessation of the powers of a justice with any age, or with the pensionable age established by law, but only with one of the specified alternatives – with the expiry of the term of nine years, which is established in the Constitution itself (taking account of the reservation provided for in Paragraphs 2, 3 and 4 of Article 7 of the Republic of Lithuania's Law on the Procedure for the Entry into Force of the Constitution of the Republic of Lithuania, which is a constituent part of the Constitution).

Since the expiry of the term of powers and the fact that a judge reaches the pensionable age established under the law are alternative (equivalent) legal grounds for the cessation of the powers of a judge, the same (equivalent) legal consequences, *inter alia*, related to the social (material) guarantees of judges after their powers cease, must appear as a result of relevant legal facts.

[...]

The fact that, under the Constitution, before their powers expire or before they reach the pensionable age established by law, judges may be released from their duties due to their state of health may not serve as the grounds for not applying to them social (material) guarantees related to the status of judges after their powers cease where such guarantees are established for (and applied to) judges whose powers cease upon reaching the pensionable age established under the law or upon the expiry of their term of powers. Even though the legislature has a certain degree of discretion to establish social (material) guarantees for such judges (who are released from their duties due to the state of health before the expiry of their term of powers and reaching the pensionable age established by law) after their powers cease, it does not have the discretion to establish such a legal regulation whereby, from the aspect of the social (material) guarantees of judges after their powers cease, the status of judges who are released from their duties due to the state of their health before the expiry of their term of powers and before reaching the pensionable age established under the law and the status of the judges who were released from their duties upon reaching the pensionable age established under the law or upon the expiry of their term of powers would be opposed.

It needs to be emphasised that the said ground for the cessation of the powers of a judge is related not to the free decision of a judge himself/herself no longer to work as a judge and no longer to pursue the career of a judge, but to the fact that, because of the reason that does not depend on him/her – the state of his/her health – he/she cannot hold office and his/her powers must cease early. While establishing the social (material) guarantees of judges after their powers cease, the legislature may not disregard this circumstance.

Legal situations where judges, before the expiry of their term of powers and before reaching the pensionable age established by law, are released from their duties of their own will (they resign), as well as where judges are released from their duties when they are elected to another office or are transferred, with their consent, to another place of work, should be assessed differently. Such grounds of the cessation of the powers of judges are related to the free decision of judges no longer to work as a judge and no longer to pursue the career of a judge (at all or temporarily). Thus, the legislature has the discretion to establish whether the social (material) guarantees of judges after their powers cease are related, concerning such persons (who are released from the duties of a judge of their own will, who have resigned, as well as those

who are released from duties after electing them to another office or when they are transferred, with their consent, to another place of work), only to the cessation of the powers of judges of such persons, or whether they are also linked with other legal facts.

It has been held in this ruling of the Constitutional Court that, if the legislature establishes such a social (material) guarantee of judges after their powers cease as the pension of judges, it, having regard to the Constitution, may also establish cases where the pension of judges (which is related to the constitutional status of judges) is not granted to former judges and/or where granted state pensions of judges are no longer paid to former judges. It has also been held that, while establishing such cases where the pension of judges is not granted to a former judge, it is necessary to take account, *inter alia*, of the constitutional grounds of the cessation of the powers of a judge.

In the Constitutional Court's ruling of 27 November 2006, it was held that "the conduct of a judge – both related to the direct performance of his/her duties and not related to his/her official duties – should not raise any doubts about his/her impartiality and independence; a judge must fulfil his/her duties and behave in such a manner that his/her conduct would not discredit the name of judges". It needs to be noted that, while establishing the social (material) guarantees of judges after their powers cease, account must be taken of the fact that the Constitution also provides for such grounds of the cessation of the powers of judges as the entry into effect of court judgments convicting them, the removal of judges from office according to the procedure for impeachment proceedings for a gross violation of the Constitution or a breach of the oath, or if they are found to have committed a crime, as well as the conduct of a judge discrediting the name of judges. Thus, a law must establish such a legal regulation that, if a judge is released from his/her duties on the said grounds, he/she loses the respective social (material) guarantees of a judge that are established for (applied to) him/her upon the expiry of his/her term of office and are related to the constitutional status as a judge and his/her dignity.

It also needs to be noted that, as the Constitutional Court held in its ruling of 27 November 2006, while establishing in the Law on Courts the procedures for releasing a judge from his/her duties (taking account of, *inter alia*, the grounds (particularities thereof) for the release from his/her duties), it is necessary in all cases to pay regard to the principle of the independence of judges and courts, the presumption of innocence, as well as requirements of the due process of law and other imperatives laid down in the Constitution.

Holding judges administratively responsible (judges do not have immunity from administrative responsibility except in situations where such responsibility is related to the restriction of liberty) (Paragraph 2 of Article 114 of the Constitution)

The Constitutional Court's ruling of 17 December 2007

... The immunity of a judge from administrative responsibility, as well as the immunity of a member of the Seimas and that of the Government, who are also officials fulfilling their functions in implementing state power, from administrative responsibility, is not established in the Constitution except in situations where administrative responsibility is related to the restriction of the liberty of a judge ...

On the other hand ... an unfounded attempt to hold a judge administratively responsible in certain circumstances may actually mean an interference with his/her activities in an attempt to make an impact on the decisions of such a judge, or to take revenge on such a judge for decisions made by him/her.

Thus, the Constitution gives rise to the obligation of the legislature to establish such a procedure for bringing judges to administrative responsibility that could ensure as much as possible that judges are held administratively responsible only on reasonable grounds.

At the same time, it should be noted that, in the course of ensuring the independence of judges when they administer justice, regard should be paid to the fact that, under the Constitution, judges have no immunity from administrative responsibility (except in situations where administrative responsibility is related to the restriction of liberty). A fair balance should be found for the purpose of implementing the provisions of Paragraphs 1 and 2 of Article 114 of the Constitution.

For instance, such a rule would generally comply with the Constitution (also from the *de lege ferenda* viewpoint) that, in order to bring a judge to administrative responsibility, consent (permission) should be

obtained from a certain institution of the judiciary (particular court, a higher court of the respective system of courts) or a self-governance institution of the judiciary (special institution of judges, which is envisaged in Paragraph 5 of Article 112 of the Constitution and is provided for by law, or another self-governance institution of the judiciary).

It should be emphasised that the aim of such consent (permission) is to make sure that no preconditions are created for a judge who commits an administrative violation to escape administrative responsibility, and that no impact on the activities of a judge is made, since any such impact is prohibited by the Constitution (Paragraph 1 of Article 114 of the Constitution).

The pension of a judge as a social (material) guarantee of judges (Articles 52 and 109 of the Constitution)

The Constitutional Court's ruling of 29 June 2010

The Constitutional Court has held that, if the legislature consolidates such a social (material) guarantee of judges after their powers cease as the pension of judges, this guarantee is defended not only under Article 109 of the Constitution, but also under Article 52 thereof (ruling of 22 October 2007).

... the legislature, while regulating the relationships connected with the state pension of judges, must establish, by means of a law, the grounds and conditions for granting this pension. The legislature may establish, by means of a law, the maximum amount of the state pension of judges and consolidate various ways for determining this amount. In doing so, the legislature must not violate the norms and principles of the Constitution. In this context, it needs to be noted that the legislature, while consolidating, by means of a law, the maximum amount of such a pension and the ways for determining this amount, must pay regard, *inter alia*, to the fact that the state pension of judges is a social (material) guarantee of judges after their powers cease, which stems from the Constitution and is defended not only under Article 109 of the Constitution, but also under Article 52 thereof, that this social (material) guarantee must be in line with the constitutional status of judges and their dignity, and that such a constitutional social (material) guarantee of judges must be real and not merely nominal. Otherwise, the essence and purpose of the state pension of judges as a social (material) guarantee of judges after their powers cease, which stems from the Constitution, would be denied; thus, the preconditions for deviating from the requirements arising from the Constitution, *inter alia*, Paragraph 2 of Article 109 thereof, as well as from the constitutional principle of a state under the rule of law, would be created.

The differentiation of the social (material) guarantees of judges

The Constitutional Court's ruling of 29 June 2010

... the guarantees of the social (material) nature of judges, *inter alia*, the social guarantees after the powers of judges cease, may be differentiated according to the length of time during which a person works as a judge. ... the size of the social (material) guarantees after the powers of judges cease may also be differentiated according to the length of time during which a person works as a judge. However, a legal regulation under which the size of the social (material) guarantees of judges after their powers cease is differentiated according to the length of time during which a person works as a judge must not deviate from the constitutional concept of this social (material) guarantee of judges. In this context, it needs to be noted that such a legal regulation whereby the size of the said social (material) guarantee of judges would be the same or similar for judges who received the remuneration of equal or similar amount, but whose duration of work in courts differs considerably, or whereby the size of the said social (material) guarantee would differ considerably for judges who received the remuneration of equal or similar amount, but whose duration of work in courts differs insignificantly, would not be in conformity with the constitutional concept of the social (material) guarantee of judges after their powers cease, *inter alia*, with the requirements of Paragraph 2 of Article 109 of the Constitution, as well as with the imperatives of justice, proportionality, and reasonableness, which stem from the constitutional principle of a state under the rule of law

[...]

... while regulating the relationships connected with the social (material) guarantees of judges after the powers of judges cease, *inter alia*, when differentiating these guarantees, account must be taken of the fact that the classification of courts as belonging not to one, but, rather, to several (at present – three) systems of courts stems from the Constitution; a separate system of courts is comprised of the Constitutional Court, characterised by its own particularities, *inter alia*, the aspect of the term of office of the justices of the Constitutional Court.

... the legislature, while regulating the relationships connected with the social (material) guarantees of judges upon the expiry of their term of powers, must also take account of the fact that the justices of the Constitutional Court differ from the judges of other courts with respect to their constitutional status, *inter alia*, the term of office. Otherwise, the constitutional concept of the social (material) guarantees under which the social (material) guarantees of judges must be differentiated by taking account, *inter alia*, of the specificity of the system of courts and the particularities of the status of judges of the systems of courts, would be deviated from.

Reducing the financing of courts and the social (material) guarantees of judges upon the emergence of a particularly difficult economic and financial situation in the state

The Constitutional Court's ruling of 29 June 2010

The Constitution ... prohibits the reduction of the remuneration and [other] social guarantees of judges; any attempts to reduce the remuneration of judges or their other social (material) guarantees, or any limitation upon the financing of courts should be treated as an encroachment upon the independence of judges and courts (rulings of 6 December 1995 and 21 December 1999, the decision of 12 January 2000, the rulings of 12 July 2001 and 28 March 2006, and the decision of 8 August 2006). As well as any other person, a judge has the right to defend his/her rights, legitimate interests, and legitimate expectations (rulings of 12 July 2001 and 22 October 2007).

On the other hand, when there is an essential change in the economic and financial situation of the state and when, due to special circumstances (economic crisis, a natural disaster, etc.), a particularly difficult economic and financial situation arises in the state, there may be not enough funds, due to objective reasons, to fulfil the functions of the state and to satisfy the public interests and, thus, also to ensure the material and financial needs of courts. Under such circumstances, the legislature may change the legal regulation governing remuneration and pensions paid to various persons and consolidate such a legal regulation governing remuneration and pensions that would be less favourable to those persons if this is necessary in order to ensure the vital interests of society and the state and to protect other constitutional values. However, in such cases the legislature must also maintain the balance between the rights and legitimate interests of persons with respect to whom the less favourable legal regulation is established and the interests of society and the state, i.e. the legislature must pay regard to the requirements of the principle of proportionality. Consequently, in the case of a particularly difficult economic and financial situation in the state, the remuneration of judges and the state pensions of judges may also be reduced. If such a legal regulation were established whereby, in the case of a particularly difficult economic and financial situation in the state, it would not be allowed to reduce exclusively the financing of courts or exclusively the remuneration and the state pensions of judges, this would mean that courts are groundlessly singled out from among other institutions that implement state power and that judges are groundlessly singled out from among other persons that participate in carrying out the powers of the respective institutions of state power. The consolidation of such an exceptional situation of courts (judges) would not be in line with the requirements of an open, fair, and harmonious civil society and the imperatives of justice. It is allowed to worsen the financial and material conditions provided for under laws for the functioning of courts and to reduce the remuneration of judges and the state pensions of judges only by means of a law and it is allowed to do so only on a temporary basis for the period of time when the economic and financial condition in the state is particularly difficult; such reduction of the remuneration and state pensions of judges must not give rise to any preconditions for the violation of the independence of courts by any other institutions of state power and their officials (rulings of 26 March 2006 and 22 October 2007).

... if such a legal regulation were established whereby the size of the said social (material) guarantees of judges would be calculated on the basis of the remuneration of judges temporarily reduced due to a particularly difficult economic and financial situation in the state, this would not be in line with the imperatives of the equality of the rights of persons and justice, which stem from the Constitution, *inter alia*, from the constitutional principle of a state under the rule of law.

It needs to be noted that the modification of a legal regulation by means of which state pensions are reduced to a large extent due to the fact that, upon the emergence of an extreme situation (economic crisis etc.) in the state, the economic and financial situation changes in such a way that the accumulation of the funds necessary to pay state pensions is not secured is an essential amendment to the legal regulation of these pensions. Thus, the legislature, upon the emergence of an extreme situation where, *inter alia*, due to an economic crisis, it is impossible to accumulate the amount of the funds necessary to pay state pensions, must, while reducing state pensions to a large extent, provide for such a mechanism of compensating for losses incurred by the persons to whom such pensions were granted and paid whereby, after the said extreme situation is over, the state would undertake the obligation to such persons to compensate them, in a fair manner and within a reasonable time, for the losses incurred by them due to the reduction of state pensions (decision of 20 April 2010).

The Constitutional Court has also held that the nature and character of state pensions are different from those of state social insurance old-age pensions, as well as from the nature and character of other state social insurance pensions, and these particularities imply that, when there is a particularly difficult economic and financial situation in the state and when, due to this, it is necessary to temporarily reduce pensions in order to secure the vitally important interests of society and the state and to protect other constitutional values, the legislature may reduce these pensions to the extent that is greater than the reduction of old-age or disability pensions. The aforesaid particularities also imply that losses incurred due to the reduction of state pensions may be compensated to the extent that is smaller than compensation for losses incurred due to the reduction of old-age or disability pensions (decision of 20 April 2010).

These official constitutional doctrinal provisions are *mutatis mutandis* also applicable to the reduction of the state pensions of judges.

Remunerating judges for overtime work, work during days off, and on holidays

The Constitutional Court's ruling of 14 February 2011

... heads of courts (their deputies, chairpersons of divisions, etc.) must organise the work of courts, *inter alia*, work after working hours and work during days off and on holidays, so that the allocations set for the remuneration of judges would be used rationally.

[...]

... the Constitution and laws also give rise to such functions of judges while performing which a judge is obliged to work overtime, during days off, and on holidays: for instance, under Paragraph 3 of Article 20 of the Constitution, a person apprehended in *flagrante delicto* must, within 48 hours, be brought before a court for the purpose of deciding, in the presence of this person, on the validity of the apprehension ...

[...]

... under the Constitution, *inter alia*, Paragraph 1 of Article 48 thereof, there may not be any such a situation where a judge who fulfils such functions specified in ... laws that must be performed after working hours, during days off, and on holidays would be not remunerated or would not be remunerated for the said work in a fair manner.

Consequently, under the Constitution, *inter alia*, Paragraph 1 of Article 48 thereof, and the constitutional principle of a state under the rule of law, such a legal regulation [must be] established under which judges who perform the functions of judges specified in ... laws would be remunerated for overtime work, work during days off, and on holidays in a fair manner.

Reducing the remuneration of judges upon the emergence of a particularly difficult economic and financial situation in the state

The Constitutional Court's ruling of 1 July 2013

... the reduction of the remuneration of judges must not be disproportionate or discriminatory; *inter alia*, remuneration may not be reduced exclusively for judges, or exclusively for judges of certain courts, or exclusively for judges performing certain duties; the proportions of the amounts of remuneration established at the time prior to the emergence of a particularly difficult economic and financial situation in the state for judges performing different duties (for judges of different systems of courts and/or of different levels of courts), as well as the proportions of the amounts of remuneration established for different categories of judges and other persons (*inter alia*, state servants, politicians, and officials) who are paid for their work from the funds of the state or municipal budget, may not be violated. Any failure to observe the said requirements should be regarded as an encroachment upon the independence of judges and courts and, thus, *inter alia*, also as a violation of Paragraph 2 of Article 109 of the Constitution and the constitutional principle of a state under the rule of law.

The independence of judges and courts

The Constitutional Court's decision of 10 March 2014

The principle of the independence of judges and courts, which is enshrined in the Constitution, obliges the legislature to establish such guarantees of the independence of judges and courts that would ensure the impartiality of courts in adopting decisions and would not permit any interference with the activities of judges and courts in the course of administering justice (ruling of 28 March 2006). In the jurisprudence of the Constitutional Court, it has been held that the independence of judges and courts, as well as their impartiality, may be ensured by means of various measures, *inter alia*, by establishing, by means of laws, their procedural independence, the organisational independence and self-governance of courts, the status of judges, and the social (material) guarantees of judges (rulings of 21 December 1999, 27 November 2006, and 22 October 2007).

The assessment of the entirety of the guarantees of the independence of judges and courts makes it possible to assert that the said guarantees are closely interrelated (ruling of 6 December 1995). In general, the independence of judges and courts cannot be assessed according to any single, even very significant, feature. Therefore, it is universally recognised that, if any of the guarantees of the independence of judges and courts are violated, the administration of justice can be compromised and there would be a risk that human rights and freedoms will not be ensured and the supremacy of law will not be guaranteed (ruling of 21 December 1999).

The procedural independence of judges

The Constitutional Court's decision of 10 March 2014

The procedural independence of judges and courts, which includes, *inter alia*, the autonomy of courts in deciding all issues related to a case under consideration, is one of the aspects of the principle of the independence of judges and courts – only a court itself decides on how it should consider a case. The Constitutional Court has held that judges are not bound by the obligation to account for cases considered by them to any state institution or officials (ruling of 21 December 1999). The procedural independence of a judge is a necessary condition for an impartial and fair consideration of a case (ruling of 21 December 1999).

Decisions adopted by a judge may be reviewed and altered or rescinded only by a court of higher instance in accordance with the procedure provided for in procedural laws (ruling of 21 December 1999). The Constitutional Court has held that the purpose of the instance system of courts is to remove any possible errors of courts of lower instance, not to permit the administration of injustice and, thus, to protect the rights and legitimate interests of a person and society (rulings of 16 January 2006, 28 March 2006, 6 December 2012, and 15 November 2013). The purpose of the instance system of courts of general

jurisdiction is to create the preconditions for courts of higher instance to correct any errors of fact (i.e. of the establishment and assessment of legally significant facts) or those of law (i.e. of the application of law), which could, for some reasons, be made by a court of lower instance, and not to permit the administration of injustice in any civil case, criminal case, or case of another category considered by courts of general jurisdiction (ruling of 28 March 2006). Justice is administered by always leaving the possibility of correcting any possible error (rulings of 9 December 1998 and 15 November 2013).

The instance system of courts of general jurisdiction, which stems from the Constitution, may not be interpreted as restricting the procedural independence of courts of general jurisdiction of lower instance: courts of general jurisdiction of higher instance (and judges thereof) may not interfere in cases considered by courts of general jurisdiction of lower instance, give them any obligatory or recommendatory instructions on how the cases in question must be decided, etc.; in respect of the Constitution, such instructions (whether obligatory or recommendatory) should be assessed as acting *ultra vires* by the said courts (judges) (rulings of 28 March 2006 and 9 May 2006).

It should be noted that the said provisions of the official constitutional doctrine, which reveal the purpose of the instance system of courts of general jurisdiction and the procedural independence of courts of general jurisdiction, are also *mutatis mutandis* applicable to specialised courts, which are established under Paragraph 2 of Article 111 of the Constitution.

The self-regulation and self-governance of the judiciary

The Constitutional Court's decision of 10 March 2014

The Constitutional Court has held on more than one occasion that the full role and independence of the judiciary imply its self-regulation and self-governance, which includes, *inter alia*, the organisation of the work of courts and the activities of the professional corps of judges (rulings of 21 December 1999 and 9 May 2006).

A special institution of judges, provided for in Paragraph 5 of Article 112 of the Constitution, which advises the President of the Republic on the appointment, promotion, and transfer of judges or their release from duties, is an important element of the self-governance of the judiciary as an independent branch of state power. The constitutional powers of the said institution of judges are related to the participation of the judiciary, as the branch of state power formed on a professional basis, and certain members of the corps of judges who implement judicial power and, in accordance with the procedure prescribed under the law, are appointed or elected to the said special institution of judges in adopting decisions on the career of judges (ruling of 9 May 2006). A special institution of judges, which is provided for in Paragraph 5 of Article 112 of the Constitution, is a counterbalance to the President of the Republic as the subject of the executive in the area of the formation of the corps of judges (rulings of 21 December 1999 and 13 December 2004).

In the jurisprudence of the Constitutional Court, among other things, it has been held that the inadmissibility, which stems from the Constitution, to release a judge from his/her duties without the advice of a special institution of judges, which is specified in Paragraph 5 of Article 112 of the Constitution and is provided for by means of a law, is a very important guarantee of the independence of judges and courts and is one of the means that helps judges of all courts with no exception to protect themselves from the interference of state power and governing institutions, the members of the Seimas, as well as other officials, political parties, political and public organisations, and other persons, with the activities of judges or courts (ruling of 9 May 2006).

As it was noted in the Constitutional Court's ruling of 9 May 2006, a special institution of judges, which is specified in Paragraph 5 of Article 112 of the Constitution, is not the only element of the self-governance of the judiciary as an independent branch of state power; under the Constitution, the legislature, while paying regard to the constitutional principle of the independence of judges and courts and other provisions of the Constitution, also has the powers to establish, by means of a law, other self-governance institutions of the judiciary, to establish the procedure of their formation, powers, etc.; moreover, while seeking to ensure the effectiveness of the self-governance of the judiciary and in view of the fact that, under the Constitution, the self-governing judiciary must not be too centralised, certain such other institutions

must be formed (first of all, the meeting of judges (or their representatives) without which the self-governance of the judiciary as a fully fledged and independent branch of state power is, in general, impossible); while regulating the relationships related to the formation of such institutions, the legislature has broad discretion.

The protection of the social (material) guarantees of judges, *inter alia*, the prohibition on reducing the level of these guarantees in cases where the system of the state pensions of judges is reorganised

The Constitutional Court's decision (no KT1-S1/2015) of 14 January 2015

... the state pension of judges, established by means of a law, is one of the types of pensions that are not directly specified in Article 52 of the Constitution; it is linked with a special status of a person – it is granted to judges for their service after their powers cease. It should also be noted that the legislature has a certain degree of discretion to establish the conditions for granting and paying the said pensions and their amounts, *inter alia*, when the system of pensions is reorganised; however, when doing so, it must pay regard to the Constitution.

In this context, the provisions of the Constitutional Court's ruling of 29 June 2010 that are related to the independence of judges and courts, which is consolidated in the Constitution (*inter alia*, Article 109 thereof), should also be noted:

- the independence of judges and courts is not a privilege, but one of the most important duties of judges and courts, stemming from the right (guaranteed by the Constitution) of every person, who believes that his/her rights or freedoms have been violated, to have an impartial arbiter of a dispute, who would settle a legal dispute on the merits under the Constitution and laws (rulings of 6 December 1995, 21 December 1999, 12 July 2001, 9 May 2006, and 22 October 2007);

- a judge, who is obligated to consider conflicts arising in society, as well as those between a person and the state, must be not only highly professionally qualified and of impeccable reputation, but also materially independent, and feel secure as to his/her future (rulings of 12 July 2001 and 22 October 2007); the imperative of the constitutional protection of the remuneration and other social (material) guarantees of judges stems from the principle of the independence of judges and courts, which is consolidated in the Constitution (*inter alia*, Article 109 thereof); through this principle, attempts are made to protect judges administering justice against both any influence of the legislative and executive branches and that of other state establishments and officials, political and public organisations, commercial and economic structures, and other legal and natural persons;

- the social (material) guarantees of the principle of the independence of judges that stem from the Constitution (which, actually, are also consolidated in the law of other democratic states, as well as in various international acts) mean that the state has the duty to ensure such social (material) provision for judges that would be in conformity with the status of judges while they are in office, as well as upon the expiry of their term of office (rulings of 21 December 1999 and 22 October 2007). Under the Constitution, the material and social guarantees established for judges must be such that are in line with the constitutional status of judges and their dignity (decision of 8 August 2006 and the ruling of 22 October 2007);

- the legislature must establish such a legal regulation that would ensure the independence of judges and courts, *inter alia*, the social (material) guarantees of judges, not only when they are in office, but also after their powers cease; in doing so, the legislature must pay regard to the norms and principles of the Constitution; after the powers of judges cease, the social (material) guarantees of judges may be varied, including, *inter alia*, periodic payments, one-off payments, etc.; the constitutional basis for establishing such guarantees is the exceptional constitutional status of judges, which is determined by the function of the administration of justice; therefore, the said guarantees may depend only upon such circumstances that are related to the constitutional status of judges, but they may not be regarded as replacing other social (material) guarantees that must be ensured to former judges on other grounds including those that are common to all working persons; the social (material) guarantees of judges after their powers cease must be real and not merely nominal (ruling of 22 October 2007);

– the legislature, while regulating the relationships linked with the state pension of judges, must establish, by means of a law, the grounds and conditions for granting this pension; the legislature must pay regard, *inter alia*, to the fact that the state pension of judges is a social (material) guarantee of judges after their powers cease, which stems from the Constitution and is defended not only under Article 109 of the Constitution, but also under Article 52 thereof, that this social (material) guarantee must be in line with the constitutional status of judges and their dignity, and that such a constitutional social (material) guarantee of judges must be real and not merely nominal. Otherwise, the essence and purpose of the state pension of judges as a social (material) guarantee of judges after their powers cease, which stems from the Constitution, would be denied; thus, the preconditions for deviating from the requirements arising from the Constitution, *inter alia*, Paragraph 2 of Article 109 thereof, as well as from the constitutional principle of a state under the rule of law, would be created.

Thus, it should be noted that the state pension of judges, which is established by means of a law, is not an objective in itself and, under the Constitution, is not regarded as a privilege; the establishment of such a guarantee is related to the special constitutional status of judges and, in particular, with the requirement of the independence of judges, which is established in the Constitution, *inter alia*, Article 109 thereof. In other words, the state pension of judges, which is established by means of a law, is one of the social (material) guarantees of the principle of the independence of judges, which is consolidated in the Constitution, i.e. such a social (material) guarantee of judges that is established (applied) after their powers cease and is defended under Article 109 of the Constitution.

It needs to be emphasised that the social (material) guarantees of judges that are established (applied) to judges after their powers cease are one of the measures for ensuring the independence of judges. Only the provision of real rather than nominal social (material) future guarantees (*inter alia*, the pensions of judges), which are in line with the constitutional status of judges and their dignity, may ensure that, when administering justice, judges are not exposed to any influence of the decisions of the legislative or executive branch of power, or to any interference with their activities by the institutions of state power and governance, or their officials, or other persons; the provision of real social (material) guarantees may also protect judges against such possible decisions of the legislative, the executive, or public administration subjects that could put pressure on the decisions of judges in the course of administering justice; in addition, the provision of the said social (material) guarantees to judges may reduce the risk of corruption.

Consequently, although the state pension of judges, which is established by means of a law, is one of the types of pensions that are not directly specified in Article 52 of the Constitution and the legislature has a certain degree of discretion to establish the conditions for granting and paying the said pensions and their amounts, *inter alia*, while reorganising the system of pensions, the discretion of the legislature to regulate the state pensions of judges is narrower than the one in respect of other state pensions, since, among other requirements stemming from the Constitution, the legislature is also bound by the principle of the independence of judges and courts, which is consolidated in the Constitution, *inter alia*, by the imperative of the reality of the social (material) guarantees of judges.

[...]

... it should be noted that the prohibition on reducing the level, established by means of a law, of the social (material) guarantees of judges, *inter alia*, of those which are established (applied) to judges after their powers cease, stems from the principle of the independence of judges and courts, which is consolidated in the Constitution. On the other hand, this prohibition is not absolute: the level of the social (material) guarantees that are established for (applied to) judges after their powers cease may be reduced only by means of a law and it is allowed to do so only on a temporary basis for the period of time when the economic and financial condition in the state is particularly difficult; however, such reduction must not give rise to any preconditions for the violation of the independence of courts by any other state authority institutions and their officials.

It needs to be emphasised that, otherwise, if the level of the social (material) guarantees of judges could be reduced also in other cases, i.e. when there is no particularly difficult economic and financial situation in the state, the independence of judges would be endangered; in other words, the preconditions

would be created for exerting influence on judges by means of the decisions of the legislative or executive branch, for interference by the institutions of state power and governance, or their officials, or other persons with the activities of judges, for making those decisions of the legislative, executive, or public administration subjects by means of which the social (material) guarantees of judges would be reduced by putting pressure on the decisions taken in the course of administering justice, as well as for increasing the risk of corruption.

In the light of the foregoing arguments, the conclusion should be drawn ... that, when the legislature reorganises the system of the state pensions of judges, no regulation reducing the level (established by means of a law) of the social (material) guarantees of judges may be established.

Differentiating the amount of the state pensions of judges; the imperative of the reality of the social (material) guarantees of judges

The Constitutional Court's decision (no KT1-S1/2015) of 14 January 2015

... under the Constitution:

– the length of service of judges may be a criterion for differentiating the amount of the pensions of judges; however, such a criterion must not be the only one;

– as in the case of the remuneration of judges, the position held by judges, i.e. in which system of courts and at which level of the system a person held the position of a judge, must also be a criterion for differentiating the amount of the pensions of judges; where, due to the specificity of a court, the constitutional status of judges has certain particularities, they should also be taken into account.

... Consequently, while paying regard to the Constitution and implementing the requirement, stemming therefrom, to differentiate the amount of the pensions of judges according to the positions held by judges (i.e. according to the system of courts and the level of such a system in which a person held the position of a judge), the legislature may provide that the remuneration received by judges, which, as mentioned before, must also depend on the positions of judges (i.e. the system of courts and the level of such a system in which a person held the position of a judge), is one of the criteria for differentiating the amount of the state pensions of judges.

[...]

... After the legislature has established such a criterion, regard must ... be paid to the prohibition on differentiating the level of the social (material) guarantees of judges, which are established (applied) upon the expiry of the powers of judges, according to when the respective guarantees started to apply to a person, as well as to the requirement to review, as appropriate, the level of the social (material) guarantees applied to judges whose powers have already ceased if, in a changing economic or social situation, higher guarantees are established to the judges of the courts of the same system and the same level whose powers will expire later; both the said prohibition and requirement stem from the Constitution (*inter alia*, from the constitutional principle of the independence of judges and courts, the imperative of the reality of the social (material) guarantees of judges, and the equal constitutional status of judges). Otherwise, a situation, prohibited by the Constitution, could arise where only such social (material) guarantees that were established at the moment of the cessation of the powers of judges would be applied to judges whose powers ceased, i.e. in the long term (if an economic or social situation changed), the said guarantees would no longer be real, but nominal.

Consequently, while paying regard to the Constitution, *inter alia*, the constitutional principle of the independence of judges and courts, the imperative of the reality of the social (material) guarantees of judges, and the equal constitutional status of judges, it is not allowed to establish any such a legal regulation that would create the preconditions for paying the state pensions of a considerably different amount of judges to persons whose length of service as a judge is the same at the same level of the same system of courts, irrespective of when the pension of judges would be granted to them.

In the light of the foregoing arguments, the conclusion should be drawn ... that, after the legislature has provided that remuneration received by judges is one of the criteria for differentiating the amount of the state pensions of judges, the Constitution does not allow any such a legal regulation under which an

increase in the remuneration of judges would have no influence on the amount of the granted and paid state pensions of judges.

The right of judges to receive remuneration for participation in projects for international cooperation and democracy promotion where such projects are related to improving the system of justice and the activity of courts

The Constitutional Court's decision of 16 May 2016

... Paragraph 1 of Article 135 of the Constitution consolidates the grounds for international cooperation carried out by the Republic of Lithuania in order to implement the constitutional objectives of foreign policy to ensure national security and independence, the welfare of its citizens, and their basic rights and freedoms, and to contribute to the creation of the international order based on law and justice; when account is taken of the geopolitical orientation of the State of Lithuania, the aforementioned grounds for international cooperation imply such an activity performed by the State of Lithuania, by its institutions, and by individuals employed therein that is aimed at contributing to the partnership of other states with the European Union or with NATO, or at contributing to the integration of the said states into these international organisations by promoting the dissemination of universal and democratic values, as well as the principles of EU law, as, for instance, democracy, the rule of law, transparency, the independence of courts and judges, respect for human rights and fundamental freedoms, and, *inter alia*, the dissemination of the said values and principles in the spheres of the improvement of the systems of justice and the activity of courts.

... courts are among the institutions exercising state power; the judiciary may fulfil its constitutional obligation and function, which is the administration of justice, only while being autonomous and independent of the other branches of power. In this context, it should be mentioned that the Constitutional Court has held that the autonomy and independence of judicial power does not mean that it and other state powers – legislative power and executive power – may not cooperate, of course, provided that they do not interfere with the exercise of the powers of other branches of power (ruling of 9 May 2006).

This, among other things, means that, under the Constitution, the role of courts is not limited exclusively to the administration of justice; as well as other institutions of state power, courts, within their constitutional competence, either independently or in cooperation with other state institutions, may participate in carrying out the general tasks and functions of the state; *inter alia*, courts may also participate in the activity of achieving the constitutional objectives of the foreign policy of the Republic of Lithuania and in the activity of fulfilling international obligations and those related to full membership in the European Union and NATO, including the participation in projects for international cooperation and democracy promotion. As mentioned before, this geopolitical orientation, which has been chosen by the Republic of Lithuania and is a constitutional value, also implies such an activity performed by the State of Lithuania, by its institutions, and by individuals employed therein that is aimed at contributing to the partnership of other states with the European Union or with NATO, or at contributing to the integration of the said states into these international organisations by promoting the dissemination of universal and democratic values, as well as the principles of EU law, *inter alia*, the dissemination of the said values and principles in the spheres of the improvement of the system of justice and the activity of courts.

Thus, it is possible to implement the participation of the State of Lithuania and its institutions, *inter alia*, courts, in the said activity, among other things, when judges take part in support projects funded by international organisations or foreign states, or in projects financed under the Lithuanian Development Cooperation and Democracy Promotion Programme, where such projects are related to improving the system of justice and the activity of courts.

In the context of this decision, it also needs to be mentioned that the Constitutional Court has noted that the appropriate preparation of judges, the improvement of their knowledge and in-service training are an important precondition for ensuring the proper activity of courts (ruling of 21 December 1999 and the decision of 10 March 2014). The qualification of judges, their professionalism, and their ability to decide

cases following not only laws, but also law, are among the factors determining public trust in courts (ruling of 27 November 2006).

It should be noted that one of the preconditions for the effective improvement of the qualification of judges is the possibility for judges who hold higher qualification, have greater work experience as a judge, and possess specific knowledge related to a certain area of law to share their knowledge and experience with other judges, *inter alia*, on the international level, as, for instance, when judges participate in projects for international cooperation and democracy promotion, thus contributing to the implementation of the aforesaid constitutional objectives of the foreign policy of the Republic of Lithuania, *inter alia*, to the fulfilment of the international obligations arising from the membership in the European Union and NATO, which include assistance to other states in the processes of their partnership with or integration into the European Union or NATO, as well as to the fulfilment of other international obligations undertaken by the State of Lithuania.

It has been mentioned that, under the Constitution, courts are allowed to participate in the activity of achieving the constitutional objectives of the foreign policy of the Republic of Lithuania and in the activity of fulfilling international obligations and those related to full membership in the European Union and NATO, including the participation in projects for international cooperation and democracy promotion. This means, among other things, that courts and judges may participate in an activity aimed at contributing to the improvement of the qualification of judges, *inter alia*, judges from other states, and at promoting the dissemination of universal and democratic values, as well as the principles of EU law, *inter alia*, the dissemination of the said values and principles in the spheres of the improvement of the systems of justice and the activity of courts.

... under Paragraph 1 of Article 113 of the Constitution, judges may not receive any remuneration other than the remuneration established for judges and payment for educational or creative activities. Thus, judges may receive payment for participating in the aforementioned international projects only if they are engaged in educational or creative activities while participating in the said projects.

At the same time, it needs to be noted that ... the constitutional mission of courts is to administer justice. Thus, any other activity of judges, *inter alia*, their participation in support projects funded by international organisations or foreign states, or in projects financed under the Lithuanian Development Cooperation and Democracy Promotion Programme, where such projects are related to improving the system of justice and the activity of courts, may not interfere with the fulfilment of the main constitutional judicial obligation, arising from the Constitution, *inter alia*, Article 109 thereof, to administer justice in a proper and effective manner. On the other hand, it should also be noted that judges may participate only in such activity that is in line with the impartiality and independence of judges.

[...]

In view of what has been stated above, the conclusion should be drawn that the provision “Judges may receive only the remuneration of a judge paid from the state budget. Judges may not receive any remuneration other than the remuneration established for them and payment for educational or creative activities” ... of the Constitutional Court’s ruling of 12 July 2001 means, *inter alia*, that judges may receive payment for participating in support projects funded by the European Union, by other international organisations, or by foreign states, or for participating in projects financed under the Lithuanian Development Cooperation and Democracy Promotion Programme, where such projects are related to improving the system of justice and the activity of courts only if they are engaged in educational or creative activities while participating in the said projects ...

The right of judges to hold the duties of a judge of an international court and to receive remuneration for holding such duties

The Constitutional Court’s decision of 16 May 2016

In the Constitutional Court’s ruling of 12 July 2001, a certain provision of which is requested to be interpreted, it was noted that the incompatibility of the office of a judge with another office or employment is determined by the special legal situation of both judges and courts as one of the branches of state power;

the established prohibition is aimed at ensuring the independence and impartiality of judges, which are necessary conditions for the implementation of justice.

It is clear from this provision that the prohibition imposed on judges on holding any other elective or appointive office, or working in any private establishments or enterprises, is not an objective in itself – this prohibition is aimed at ensuring the independence and impartiality of judges and the proper administration of justice.

In this context, it should be noted that ... the question whether the prohibition preventing a judge from receiving any remuneration other than that established for judges and payment for educational or creative activities includes the prohibition preventing a judge from receiving remuneration for holding the duties of a judge of an international court (in cases where the duties of a judge of a national court and those of a judge of an international court are combined) must be assessed in the context of the constitutional grounds for the international cooperation of the Republic of Lithuania, which are consolidated in various provisions of the Constitution, *inter alia*, in Paragraph 1 of Article 135 thereof, as well as in the context of the international obligations undertaken by the State of Lithuania of its own free will.

As mentioned before, in implementing its foreign policy, the Republic of Lithuania follows the universally recognised principles and norms of international law, seeks to ensure national security and independence, the welfare of its citizens, and their basic rights and freedoms, and contributes to the creation of the international order based on law and justice; the Republic of Lithuania participates in international organisations provided that this is not in conflict with the interests and independence of the state; respect for international law, i.e. the observance of international obligations undertaken of its own free will and respect for the universally recognised principles of international law (as well as the principle of *pacta sunt servanda*) are a legal tradition and a constitutional principle of the restored independent State of Lithuania.

It should also be noted that the general grounds, which are consolidated in the Constitution, for international cooperation carried out by the state are characterised, *inter alia*, by the establishment of the geopolitical orientation of the State of Lithuania – the membership of the Republic of Lithuania in the European Union and NATO and the necessity to fulfil the international obligations related to the said membership; the geopolitical orientation of the Republic of Lithuania is related to such an activity performed by the State of Lithuania, by its institutions, and by individuals employed therein that is aimed at contributing to the partnership of other states with the European Union or with NATO, or at contributing to the integration of the said states into these international organisations by promoting the dissemination of universal and democratic values, as well as the principles of EU law, as, for instance, democracy, the rule of law, the independence of courts and judges, respect for human rights and fundamental freedoms, *inter alia*, the dissemination of the said values and principles in the spheres of the improvement of the system of justice and the activity of courts.

As mentioned before, one of the preconditions for the effective improvement of the qualification of judges is the possibility for judges who hold higher qualification, have greater work experience as a judge, and possess specific knowledge related to a certain area of law to share their knowledge and experience with other judges, *inter alia*, on the international level, as, for instance, when judges participate in projects for international cooperation and democracy promotion, thus contributing to the implementation of the constitutional objectives of the foreign policy of the Republic of Lithuania and to the fulfilment of the international obligations arising from the membership in the European Union and NATO.

... as mentioned before, under the Constitution, the role of courts is not limited exclusively to the administration of justice – they are allowed to participate in the activity of achieving the constitutional objectives of the foreign policy of the Republic of Lithuania and in the activity of fulfilling international obligations and those related to full membership in international organisations, *inter alia*, in the European Union.

Thus, the fact that the Republic of Lithuania carries out international cooperation and complies with the assumed international obligations may also be interpreted as meaning that the Republic of Lithuania fulfils its international obligations towards the international community in the sphere of the administration

of justice, *inter alia*, its obligation to participate in the activity of international courts. The said obligations imply the duty of the state to appoint suitable and highly qualified representatives (*inter alia*, judges of national courts) to international institutions or international judicial institutions.

It should be noted that judges of international courts are subject to requirements of high professional qualification, expert knowledge, and/or proficiency in foreign languages. The recognition of the right of a judge of a national court to hold the duties of a judge of an international court (in cases where the duties of a judge of a national court and those of a judge of an international court are combined) means the recognition of high professional qualification held by him/her, as well as his/her ability to properly administer justice both on the national and international level and, thus, to contribute to achieving the constitutional objectives of the foreign policy of the Republic of Lithuania, *inter alia*, to complying with the international obligations in the sphere of the administration of justice.

Thus, the established requirements for judges relating to high professional qualification and expert knowledge are aimed at ensuring the authority of courts as independent and impartial judicial power, as well as the proper and effective fulfilment of judicial functions.

... Paragraph 1 of Article 113 of the Constitution provides, *inter alia*, that judges may not hold any other elective or appointive office, or work in any business, commercial, or other private establishments or enterprises. This prohibition is aimed at ensuring the independence and impartiality of judges, as well as the proper fulfilment of the function of the administration of justice, which is attributed to courts under the Constitution, *inter alia*, Article 109 thereof. It should also be noted that the prohibition preventing judges from working in business, commercial, or other private establishments or enterprises does not apply to their educational, creative, *inter alia*, scientific, activity in educational or scientific establishments: under the Constitution, the said activity is allowed.

In this context, it should also be mentioned that the Constitution, *inter alia*, Paragraph 2 of Article 103 and Article 112 thereof, explicitly provides for other positions in courts that may be held only by a judge of a particular court: namely, the positions of the President of the Constitutional Court, the President of the Supreme Court, the President of the Court of Appeal, as well as the presidents of regional, district, and specialised courts.

It should be noted that Paragraph 5 of Article 112 of the Constitution explicitly provides that a special institution of judges, as provided for by means of a law, advises the President of the Republic on the appointment, promotion, and transfer of judges or their release from duties. The Constitutional Court has held that this state institution must be comprised only from judges, since, under the Constitution, no other institution, official, or other person may have the powers to advise the President of the Republic on the appointment, promotion, and transfer of judges or their release from duties (ruling of 9 May 2006).

Thus, under the Constitution, judges may perform certain other judicial duties specified *expressis verbis*, including duties in judicial self-governance bodies, *inter alia*, those in a special institution of judges, which is provided for in Paragraph 5 of Article 112 of the Constitution.

It should also be noted that, under Paragraph 4 of Article 111 of the Constitution, the formation and competence of courts is established by the Law on Courts of the Republic of Lithuania. The Constitutional Court has held that the Constitution not only obliges the legislature to lay down, by means of a law, the establishment and competence of all the courts of the Republic of Lithuania (thus, including the status, formation, exercise of powers (activity), and guarantees of courts of general jurisdiction, the status of judges of these courts, etc.), which are specified in Paragraph 1 of Article 111 of the Constitution, but also *expressis verbis* consolidates the title of this law – the Law on Courts (rulings of 28 March 2006, 9 May 2006, and 22 October 2007 and the decision of 15 May 2009).

Thus, other positions that judges are also allowed to hold may be established in the Law on Courts, which is *expressis verbis* specified in the Constitution, as, for instance, the deputy president of a court, or the chairperson of a particular division of a court.

... it should be noted that judges of national courts may also perform the duties of judges of international courts (in cases where they combine the duties of a judge of a national court and those of a judge of an international court) if such a possibility is provided for under the obligations consolidated in

the international treaties of the Republic of Lithuania to participate in the activity of international courts and implies the duty of the state to appoint highly qualified representatives (*inter alia*, judges of national courts) to international institutions or international judicial institutions. It should also be noted that the activity of such representatives, where they combine the duties of a judge of a national court and those of a judge of an international court, contributes to the achievement of the constitutional objectives of the foreign policy pursued by the Republic of Lithuania, *inter alia*, to the fulfilment of the international obligations in the sphere of the administration of justice, as well as to the creation of the international order based on law and justice. In addition, the said activity where the duties of a judge of a national court and those of a judge of an international court are combined must not be continuous – it may be carried out only on a temporary basis

The performance of the duties of a judge of an international court may not be considered the activity of a judge prohibited by Paragraph 1 of Article 113 of the Constitution, since the mission of the duties of a judge of a national court and that of the duties of a judge of an international court is to administer justice: judges are subject to the same requirements of the independence and impartiality of courts and judges, they are granted a special status, *inter alia*, the term of powers of judges is inviolable and any interference with the activity of judges and courts is prohibited. It should be noted that a judge of a national court, when holding the duties of a judge of an international court (in cases where the duties of a judge of a national court and those of a judge of an international court are combined), may not, solely due to this, lose his/her powers of a national judge. At the same time, it should also be noted that combining the duties of a judge of a national court and those of a judge of an international court in itself does not give rise to doubts as to the impartiality and independence of a judge.

In view of this, it should be held that, under the Constitution, judges are allowed to perform certain other specified duties in courts and in judicial self-governance bodies, whereas international treaties of the Republic of Lithuania may also provide for situations where judges may perform, *inter alia*, the duties of judges of international courts (in cases where they combine the duties of a judge of a national court and those of a judge of an international court). Such an activity may not interfere with the fulfilment of the main constitutional judicial duty, arising from Article 109 of the Constitution, to administer justice in a proper and effective manner.

It should also be held that the right of judges to perform the duties of judges of international courts (in cases where they combine the duties of a judge of a national court and those of a judge of an international court) also implies their right to receive remuneration for the performance of such duties. At the same time, it needs to be noted that ... according to Paragraph 1 of Article 113 of the Constitution, judges may not receive any remuneration other than the remuneration established for judges and payment for educational or creative activities; therefore, the conclusion should be drawn that, when performing the duties of judges of international courts (in cases where the duties of a judge of a national court and those of a judge of an international court are combined), judges are not allowed to receive the remuneration of a judge of a national court and that of a judge of an international court at the same time.

In view of what has been stated above, the conclusion should be drawn that the provision “Judges may receive only the remuneration of a judge paid from the state budget. Judges may not receive any remuneration other than the remuneration established for them and payment for educational or creative activities” ... of the Constitutional Court’s ruling of 12 July 2001 means, *inter alia*, that ... judges ... may receive the remuneration of a judge of an international court (in cases where the duties of a judge of a national court and those of a judge of an international court are combined); however, they must not receive the remuneration of a judge of a national court at the same time.

The immunity of judges (Paragraph 2 of Article 114 of the Constitution)

The Constitutional Court’s ruling of 9 March 2020

As the Constitutional Court held in its ruling of 30 May 2003, one of the constitutionally consolidated guarantees of the independence of judges is the immunity of judges, which is enshrined, *inter alia*, in Paragraph 2 of Article 114 of the Constitution, under which judges may not be held criminally responsible

or be detained, or have their liberty restricted otherwise, without the consent of the Seimas or, in the period between the sessions of the Seimas, without the consent of the President of the Republic. The Constitutional Court has held that immunity means additional guarantees for a person's inviolability, which are necessary and indispensable for the proper performance of the duties of that person (ruling of 8 May 2000).

... under the Constitution, *inter alia*, Paragraph 2 of Article 114 thereof, interpreted in conjunction with Paragraph 2 of Article 109 of the Constitution, the immunity of judges is not an objective in itself. It needs to be emphasised that the constitutional immunity of judges is functional in nature: its purpose is to guarantee the independence of judges, so that the administration of justice is ensured. Only such a concept of the immunity of judges is compatible with the obligation, stemming from the Constitution, for a democratic state under the rule of law to ensure the security of each person and all society against criminal attempts, *inter alia*, the duty of the legislature to create, by means of a legal regulation, the preconditions for the speedy disclosure and thorough investigation of criminal acts and other violations of law, as well as the preconditions for the fair solving of the question concerning the legal responsibility of persons having committed these criminal acts or other violations of law. Thus, the immunity of judges, consolidated in Paragraph 2 of Article 114 of the Constitution, is not meant to create the preconditions for judges to avoid criminal or other legal responsibility for criminal acts or other violations of law. A different interpretation of the immunity of judges, including that, purportedly, the legislature may provide for the broader immunity of judges than that consolidated in Paragraph 2 of Article 114 of the Constitution, would be incompatible with the constitutionally consolidated concept of a democratic state under the rule of law, *inter alia*, it would be incompatible with the constitutional obligation of the state to ensure the security of each person and all society against criminal attempts; the said different interpretation of the immunity of judges would also unreasonably single out judges from society and would imply a privilege, prohibited under Paragraph 2 of Article 29 of the Constitution.

... the requirement, under Paragraph 2 of Article 114 of the Constitution, that judges may not be held criminally responsible or be detained, or have their liberty restricted otherwise, without the consent of the Seimas or of the President of the Republic, is consolidated for the purpose of enabling the maximum protection of judges against unfoundedly being held criminally responsible, being detained, or having their liberty restricted otherwise in cases where it would thereby be sought to influence the decisions of judges.

Interpreting Paragraph 2 of Article 114 of the Constitution, under which a judge, *inter alia*, may not be held criminally responsible without the consent of the Seimas or, in the period between the sessions of the Seimas, without the consent of the President of the Republic, it should be noted that such consent of the Seimas or the President of the Republic may be given only in cases where, in accordance with the procedure prescribed by means of laws, sufficient data are collected to suspect the judge concerned of having committed a criminal act.

... Paragraph 2 of Article 114 of the Constitution, under which a judge, *inter alia*, may not be held criminally responsible without the consent of the Seimas or, in the period between the sessions of the Seimas, without the consent of the President of the Republic, should be interpreted in conjunction with Paragraph 1 of Article 20 of the Constitution, according to which human liberty is inviolable, as well as in conjunction with Paragraph 2 of the said article, under which no one may be arbitrarily apprehended or detained; no one may be deprived of his/her liberty otherwise than on the grounds and according to the procedures established by law. The Constitutional Court has held that Paragraph 1 of Article 20 of the Constitution lays down the human right to physical liberty (ruling of 8 May 2000) and that this liberty means, first of all, the protection of an individual against arbitrary apprehension or detention (ruling of 5 February 1999). Paragraph 2 of Article 20 of the Constitution enshrines the principle of the lawfulness of the apprehension of a person: a person must not be deprived of liberty otherwise than on such grounds and in accordance with such procedures as are established by means of a law (ruling of 5 February 1999).

Thus, under Paragraph 2 of Article 114 of the Constitution, which enshrines the functional immunity of a judge, intended to guarantee the independence of a judge in order to ensure the administration of justice, the consent of the Seimas or that of the President of the Republic is required only for such restriction of the physical liberty of a judge that is aimed at providing the preconditions for holding the judge

criminally or otherwise legally responsible for having committed criminal acts or other violations of law; *inter alia*, this consent is required for his/her apprehension, detention, or the deprivation of his/her liberty otherwise. However, under Paragraph 2 of Article 114 of the Constitution, no consent of the Seimas or the President of the Republic is required for such procedural measures provided for by law that, in themselves, do not restrict the physical liberty of a person and are necessary for the speedy disclosure and thorough investigation of criminal acts and other violations of law, *inter alia*, for collecting evidence and identifying persons having committed criminal acts or other violations of law (*inter alia*, for carrying out a search, seizure, or inspection).

A different interpretation of Paragraph 2 of Article 114 of the Constitution, including that, purportedly, the consent of the Seimas or that of the President of the Republic is necessary for any procedural measures that, in themselves, do not restrict the physical liberty of a person, but are related to performing the duties of the person prescribed by means of laws in applying these measures, would create the preconditions for persons, *inter alia*, judges, having committed criminal acts or other violations of law to avoid criminal or other legal responsibility. The requirement to receive the consent of the Seimas or that of the President of the Republic in order for the said procedural measures to be applied to judges would be incompatible with the obligation, stemming from the Constitution, for a democratic state under the rule of law to ensure the security of each person and all society against criminal attempts, *inter alia*, with the duty of the legislature to create, by means of a legal regulation, the preconditions for the speedy disclosure and thorough investigation of criminal acts and other violations of law, as well as the preconditions for the fair solving of the question concerning the legal responsibility of persons, *inter alia*, judges, having committed these criminal acts or other violations of law.

It should be noted that the requirement, consolidated under Paragraph 2 of Article 114 of the Constitution, to receive the consent of the Seimas or that of the President of the Republic in order to hold a judge criminally responsible or detain him/her, or to restrict his/her liberty otherwise, must not be interpreted as precluding the apprehension of a judge, in accordance with the procedure prescribed by law and if necessary, where the judge is found in the act of committing a criminal offence or another violation of law. A different interpretation, including that, purportedly, the absence of the consent in question would preclude the restriction of the liberty of a judge where the judge is found in the act of committing a criminal offence or another violation of law would be incompatible with the obligation, stemming from the Constitution, for a democratic state under the rule of law to ensure the security of each person and all society against criminal attempts, since it would create the preconditions for a judge to avoid legal responsibility for the committed criminal act or another violation of law.

It should also be noted that, in cases where a judge is found in the act of committing a criminal offence, under Paragraph 2 of Article 114 of the Constitution, it is necessary, without undue delay, to receive the consent of the Seimas or, in the period between the sessions of the Seimas, the consent of the President of the Republic for holding the judge criminally responsible.

9.1.4. The constitutional status of judges. The appointment of judges, their professional career, and their release from duties. The judicial self-governance institutions

The constitutional status of judges

The Constitutional Court's ruling of 12 July 2001

The specific function of courts and the principle of the independence of judges and courts, which are consolidated in the Constitution, also determine the legal status of judges. It needs to be noted that the judiciary is formed on a professional, but not on a political basis. "According to the duties performed, judges may not be deemed to be state servants. No one may demand that they follow a certain political guideline. The judicial practice (case law) is formed only by courts while applying the norms of law. Judges ensure human rights and freedoms in that they administer justice on the grounds of the Constitution and laws" (ruling of 21 December 1999).

A special institution of judges, which is specified in Paragraph 5 of Article 112 of the Constitution and is provided for by law

The Constitutional Court's ruling of 13 December 2004

Paragraph 5 of Article 112 of the Constitution provides that a special institution of judges, as provided for by law, advises the President of the Republic on the appointment, promotion, and transfer of judges or their release from duties. In its ruling of 21 December 1999, when interpreting the said provision of Paragraph 5 of Article 112 of the Constitution, the Constitutional Court held that: “a special institution of judges, provided for in Paragraph 5 of Article 112 of the Constitution, should be interpreted as an important element of the self-governance of the judiciary, which is an independent branch of state power”; the said institution is “a counterbalance to the President of the Republic as a subject of the executive in the area of the formation of the corps of judges”.

The appointment, promotion, and transfer of judges or their release from duties (Item 11 of Article 84, Paragraphs 2, 3, and 4 of Article 112 of the Constitution)

The Constitutional Court's ruling of 9 May 2006

Subjects who have the powers to appoint, promote, or release judges from their duties, as well as to transfer judges (change their places of work), are established in the Constitution. Under Paragraph 2 of Article 112 of the Constitution, the justices of the Supreme Court, as well as its President chosen from among them, are appointed and released by the Seimas upon submission by the President of the Republic; the judges of the Court of Appeal, as well as its President chosen from among them, are appointed by the President of the Republic upon the assent of the Seimas (Paragraph 3 of Article 112); the judges and presidents of district, regional, and specialised courts are appointed and their places of work are changed by the President of the Republic (Paragraph 4 of Article 112).

Paragraphs 2, 3 and 4 of Article 112 of the Constitution, which regulate the appointment, promotion, and transfer of judges or their release from duties, are related to Item 11 of Article 84 of the Constitution, under which the President of the Republic, *inter alia*: proposes candidates for the posts of the justices of the Supreme Court for consideration by the Seimas and, on the appointment of all the justices of the Supreme Court, proposes the candidate from among them for the post of the President of the Supreme Court to be appointed by the Seimas; appoints the judges of the Court of Appeal and, from among them, the President of the Court of Appeal, provided that the Seimas gives its assent to the candidates proposed; appoints the judges and presidents of regional and district courts and changes their places of work; in cases provided for by law, submits that the Seimas release judges from their duties.

In this context, it should be mentioned that, even though Paragraph 3 of Article 112 of the Constitution *expressis verbis* regulates only the relationships of the appointment of the judges of the Court of Appeal and (after the judges of the Court of Appeal are appointed) the President of this Court, a systemic interpretation of this paragraph (when its provisions are related to Item 11 of Article 84 of the Constitution and to the constitutional principle of a state under the rule of law) implies that the judges of the Court of Appeal and the President of this court must be released from their duties under the same procedure as they are appointed, i.e. the President of the Republic has the powers to release them from their duties upon the assent of the Seimas.

It also needs to be mentioned that, under Articles 74 and 116 of the Constitution, certain judges of courts of general jurisdiction, namely the President and justices of the Supreme Court, the President and judges of the Court of Appeal (as well as the President and justices of the Constitutional Court), who grossly violate the Constitution or breach their oath, or are found to have committed a crime, may be removed from office according to the procedure for impeachment proceedings.

It should be held that the Constitution establishes such a procedure for the appointment and release of the judges and presidents of courts of general jurisdiction of various levels where such judges and presidents of courts are appointed and released by the institutions of other branches of state power – executive power and legislative power; thus, they are appointed and released, respectively, by the President of the Republic and the Seimas, i.e. institutions that are formed on a political basis. The President of the

Republic appoints and releases the judges and presidents of certain courts of general jurisdiction regarding which he/she does not have to apply to the Seimas; other judges and presidents of courts of general jurisdiction are appointed and released by the President of the Republic in such a manner that he/she must receive the assent of the Seimas beforehand; still, some other judges and presidents of courts of general jurisdiction are appointed and released by the Seimas, upon submission by the President of the Republic. It needs to be emphasised that the Seimas participates only in the appointment and release of the judges and presidents of courts of general jurisdiction of two highest levels and not of exclusively all courts; while the President of the Republic participates (in the ways established in Paragraphs 2, 3, and 4 of Article 112 and Item 11 of Article 84 of the Constitution) in the appointment and release of the judges of courts of general jurisdiction of all levels (from the lowest level – district courts – and until the highest level – the Supreme Court); however, his/her powers regarding judges of different courts of general jurisdiction are different: (1) in order to appoint or release a judge of a district or regional court or the president of a district or regional court, a decision of the President of the Republic is necessary, while the Seimas in this area does not have any powers under the Constitution; (2) in order to appoint or release a judge or the President of the Court of Appeal, the President of the Republic must apply to the Seimas and, if the Seimas gives its assent, he/she may appoint a certain person as a judge or the President of the Court of Appeal or release a certain judge or the President of the Court of Appeal from duties; also, *inter alia*, if certain circumstances significant for such appointment or release from duties come to light, he/she may decide not to appoint that person as a judge or the President of the Court of Appeal and to propose another candidate to be approved by the Seimas, or not to release a certain judge or the President of the Court of Appeal from duties (if it is not obligatory to release that judge from duties under the Constitution); (3) in order to appoint or release a justice or President of the Supreme Court, the President of the Republic must propose that the Seimas appoint or release such a person, while the final decision on the appointment of the said person as a justice or the President of the Supreme Court or on his/her release from duties is adopted by the Seimas.

Item 11 (provisions on the appointment of judges and their release from duties) of Article 84 and Paragraphs 2, 3, and 4 of Article 112 of the Constitution must be interpreted inseparably from Paragraph 5 of Article 112 of the Constitution, which prescribes that a special institution of judges, as provided for by law, advises the President of the Republic on the appointment, promotion, and transfer of judges or their release from duties.

A special institution of judges, which is specified in Paragraph 5 of Article 112 of the Constitution; the legal consequences of advice given by this institution to the President of the Republic

The Constitutional Court's ruling of 9 May 2006

... the Constitutional Court ... in its rulings of 21 December 1999, 13 December 2004, and 2 June 2005, also revealed certain elements of the status of a special institution of judges, as provided for by law and specified in Paragraph 5 of Article 112 of the Constitution ...

... the official constitutional doctrine that reveals the constitutional status of a special institution of judges, as provided for by law and specified in Paragraph 5 of Article 112 of the Constitution, is also developed in this ruling of the Constitutional Court from the *de lege ferenda* aspect so that the legislature, when regulating the relationships connected with the appointment, promotion, and transfer of judges or their release from duties, would not diverge from the constitutional concept of a special institution of judges, as provided for by law and specified in Paragraph 5 of Article 112 of the Constitution.

... a special institution of judges, as provided for by law and specified in Paragraph 5 of Article 112 of the Constitution, also participates (thus, also has certain constitutional powers) in forming the corps of judges. In the area of the formation of the corps of judges, this special institution of judges (which ... is an important element of the self-governance of the judiciary, which is an independent state power), is a counterbalance to the President of the Republic, who is a subject of executive power (rulings of 21 December 1999 and 13 December 2004). The fact the judiciary is fully fledged, autonomous, and independent, as well as the constitutional principle of the separation of powers, makes it impossible to

interpret the constitutional mission and functions of the said special institution of judges in such a way that its role as a counterbalance to the President of the Republic in the area of the formation of the corps of judges would be denied or ignored. On the other hand, as mentioned before, the checks and balances that the judiciary (institutions thereof) and other state powers (institutions thereof) have with respect to each other may not be treated as the opposition mechanisms of the respective powers; thus, it would be unfair to interpret the constitutional mission of the said special institution of judges as meaning that the said special institution of judges is meant to be exclusively a counterbalance to the President of the Republic in the area of the formation of the corps of judges, because partnership and cooperation between the President of the Republic and this special institution of judges is also necessary while forming the corps of judges (in particular, when regard is paid to the constitutionally justifiable interest of society (which is defended under the Constitution) that the corps of judges be formed fairly and transparently and that persons for the position of a judge be chosen only on the basis of their professional preparation and such personal features and other circumstances that determine their suitability or unsuitability for this activity (for the position of a judge in a certain court)).

It should be emphasised in particular that a special institution of judges, as provided for by law and specified in Paragraph 5 of Article 112 of the Constitution, is a constitutional state institution (even though its exact title is not specified in the Constitution) (ruling of 13 December 2004). The phrase “institution of judges” of Paragraph 5 of Article 112 of the Constitution implies that this institution must be collegial. It is required that such a special institution of judges must be formed; the procedure and basis of its formation must be established by means of a law. The constitutional powers of this special institution of judges may not be taken or seized by any individual official (*inter alia*, by any judge or another official of judicial power or by the president of any court) or by any other institution. A special institution of judges, as provided for by law and specified in Paragraph 5 of Article 112 of the Constitution, may not be treated as a body working on a pro-bono basis. It may not function in such a manner that the requirements of the due process of law would not be followed (in this special institution of judges itself and in relationships with other state institutions, *inter alia*, in relationships with the President of the Republic). Its decisions give rise to legal consequences.

In this context, it should be noted that, as the Constitutional Court held in its ruling of 21 December 1999, taking account of the procedure for the formation of courts established in the Constitution, as well as the constitutional regulation of the relationships of the President of the Republic with a special institution of judges, which is provided for by law and is specified in Paragraph 5 of Article 112 of the Constitution, advice given by a special institution of judges, which is specified in Paragraph 5 of Article 112 of the Constitution, gives rise to legal effects: if this special institution of judges does not give advice, the President of the Republic may not adopt decisions on the appointment, promotion, and transfer of judges or their release from duties.

This doctrinal provision means, *inter alia*, that advice given by a special institution of judges, as provided for by law and specified in Paragraph 5 of Article 112 of the Constitution, must not be interpreted as a recommendation for the President of the Republic that he/she should appoint or not appoint a person as a judge, that he/she should promote or not promote a judge, that he/she should transfer or not transfer a judge, or that he/she should release or not release a judge from duties. Far from it, i.e. if the said advice were only a recommendation, a special institution of judges, as provided for by law and specified in Paragraph 5 of Article 112 of the Constitution, would not perform one of the functions of the counterbalances of judicial power to executive power and, while forming the corps of judges, executive power would dominate judicial power; thus, there would be grounds for stating that certain preconditions are also created for the violation of the independence of judges and courts (violation of the independence of judges and courts is not precluded).

It should be noted that the legal consequences of advice given by a special institution of judges, which is provided for by law and is specified in Paragraph 5 of Article 112 of the Constitution, to the President of the Republic depend on the fact whether the President of the Republic applies to this institution regarding the appointment of a judge or his/her promotion, transfer, or release from duties.

Advice given by a special institution of judges, which is specified in Paragraph 5 of Article 112 of the Constitution, to the President of the Republic on the appointment, promotion, or transfer of judges

The Constitutional Court's ruling of 9 May 2006

In cases where the President of the Republic applies to a special institution of judges, as provided for by law and specified in Paragraph 5 of Article 112 of the Constitution, for advice regarding the appointment, promotion, or transfer of a judge, and this special institution of judges advises the President of the Republic to appoint a person as a judge, to promote a judge, or to transfer him/her, such advice is not binding on the President of the Republic. This means that the President of the Republic (*inter alia*, if certain circumstances significant for such appointment or release from duties become clear) may decide not to appoint a person as a judge, not to promote a judge, or not to transfer him/her (and, if a judge of the Supreme Court or the Court of Appeal is appointed, promoted, or transferred, the President of the Republic may decide not to propose him/her as a candidate to be approved by the Seimas). Under the Constitution, in such cases, the President of the Republic may apply to a special institution of judges, as provided for by law and specified in Paragraph 5 of Article 112 of the Constitution, for advice regarding the appointment of another person as a judge, or the promotion or transfer of another judge.

Different legal consequences of advice given by a special institution of judges, as provided for by law and specified in Paragraph 5 of Article 112 of the Constitution, to the President of the Republic arise when the President of the Republic applies to this special institution of judges regarding the appointment, promotion, or transfer of a judge and it *expressis verbis* advises the President of the Republic not to appoint a certain person as a judge, not to promote or not to transfer a certain judge, or the said special institution of judges replies to the President of the Republic that it does not advise him/her to appoint a certain person as a judge, promote a certain judge, or transfer him/her. It should be emphasised that such “non-advice” for the President of the Republic regarding the appointment of a person as a judge, the promotion or transfer of a judge, no matter in what way it is expressed in a particular act of the said special institution of judges, is legally equal to the *expressis verbis* formulated advice that the President of the Republic should not appoint a person as a judge, should not promote a judge, and should not transfer him/her. Under the Constitution, in such cases, the President of the Republic may not (respectively) appoint a person in question as a judge, or promote or transfer a judge (and, if a judge of the Supreme Court or the Court of Appeal is appointed, promoted, or transferred, the President of the Republic may not propose such a person as a candidate to be approved by the Seimas). A different interpretation (*inter alia*, such that the President of the Republic may disregard the said advice and still appoint a person in question as a judge, transfer or promote a judge (and, if a judge of the Supreme Court or the Court of Appeal is appointed, promoted, or transferred, the President of the Republic may propose him/her as a candidate to be approved by the Seimas)) of the legal force and legal circumstances of the advice of the said special institution of judges that the President of the Republic should not appoint a person as a judge and should not promote or transfer a judge would mean that a special institution of judges, as provided for by law and specified in Paragraph 5 of Article 112 of the Constitution, which is formed only on a professional basis, is not a counterbalance to the President of the Republic – a political institution of state power – in the area of the formation of the corps of judges; such an interpretation would also be inconsistent with the principle of the independence of judges and courts and with the balance of state powers consolidated in the Constitution.

Advice given by a special institution of judges, which is specified in Paragraph 5 of Article 112 of the Constitution, to the President of the Republic on the release of judges from their duties (Article 115 of the Constitution)

The Constitutional Court's ruling of 9 May 2006

Still, other different legal consequences of advice given by a special institution of judges, as provided for by law and specified in Paragraph 5 of Article 112 of the Constitution, to the President of the Republic

arise when the President of the Republic applies to this special institution of judges for advice on the release of a judge from duties.

Article 115 of the Constitution prescribes:

“The judges of the courts of the Republic of Lithuania shall be released from their duties according to the procedure established by law in the following cases:

- (1) of their own will;
- (2) upon the expiry of the term of powers, or upon reaching the pensionable age established by law;
- (3) due to their state of health;
- (4) upon election to another office, or upon transfer, with their consent, to another place of work;
- (5) when their conduct discredits the name of judges;
- (6) upon the entry into effect of court judgments convicting them.”

While interpreting the legal regulation laid down in Article 115 of the Constitution, it should be held that the grounds for release of a judge from duties are established in the said article (rulings of 22 December 1994 and 6 December 1995). Under this article, judges are released from their duties in the following cases: when a judge himself/herself, without anybody forcing him/her (of his/her own will) requests to be released from duties, i.e. he/she resigns (Item 1 of Article 115 of the Constitution); upon the expiry of the term of powers or upon reaching the pensionable age established by law (Item 2 of Article 115 of the Constitution); when the state of health of a judge is such that he/she cannot perform the duties of a judge (Item 3 of Article 115 of the Constitution); upon election to another office or upon transfer, with his/her consent, to another place of work (Item 4 of Article 115 of the Constitution); when his/her conduct discredits the name of judges (Item 5 of Article 115 of the Constitution); and upon the entry into effect of a court judgment convicting him/her (Item 6 of Article 115 of the Constitution). The cases and grounds for the release of a judge from duties established in Article 115 of the Constitution differ, *inter alia*, by the fact that some of them (expiry of the term of powers or reaching the pensionable age established by law, as provided for in Item 2 of Article 115 of the Constitution; the entry into effect of a court judgment convicting him/her, as provided for in Item 6 of Article 115 of the Constitution) are related only to the establishment (statement) of the fact of objective nature, while others (resignation – an application to be released from duties, as provided for in Item 1 of Article 115 of the Constitution; the state of health not allowing him/her to perform the duties of a judge, as provided for in Item 3 of Article 115 of the Constitution; election to another office or his/her transfer, with his/her consent, to another place of work, as provided for in Item 4 of Article 115 of the Constitution; and conduct discrediting the name of judges, as provided for in Item 5 of Article 115 of the Constitution) imply not only the establishment (statement) of the respective facts, but also their assessment.

It is clear that, in cases where the President of the Republic applies to a special institution of judges, as provided for by law and specified in Paragraph 5 of Article 112 of the Constitution, so that the said institution of judges would advise him/her on the release of a judge from duties because his/her term of powers has expired or he/she reached the pensionable age established by law, or a court judgment convicting him/her has come into effect, the said special institution of judges must make sure whether the specified facts actually exist and, if they do, it must advise the President of the Republic to release a judge in question from duties. It should be emphasised that, if a special institution of judges, as provided for by law and specified in Paragraph 5 of Article 112 of the Constitution, establishes that the said objective facts really exist, it, under the Constitution, is not allowed not to advise the President of the Republic to release a judge from duties, and the President of the Republic, when he/she receives such advice, must release a judge in question from duties (if a judge to be released from duties is a justice of the Supreme Court, the President of the Republic must propose that the Seimas release such a justice from duties, and if a judge to be released from duties is a judge of the Court of Appeal, the President of the Republic must request assent from the Seimas in order to release him/her from duties). It should be held that, under the Constitution, in such cases, a judge in question must be released from duties.

[...]

Meanwhile, in cases where the President of the Republic applies to a special institution of judges, as provided for by law and specified in Paragraph 5 of Article 112 of the Constitution, so that it would advise him/her on the release of a judge from his/her duties, as there is one of the grounds (or several such grounds) provided for in Items 1, 3, 4, and 5 of Article 115 of the Constitution, the said special institution of judges must (accordingly) not only make sure that a judge requests to be released from duties, but also assess whether he/she is doing so of his/her own will and whether he/she is forced to do so (Item 1 of Article 115 of the Constitution), it must not only make sure that a judge has health problems, but also assess in accordance with the procedure established by law whether his/her state of health is such that he/she cannot perform the duties of a judge (Item 3 of Article 115 of the Constitution); the said special institution of judges must not only make sure that a judge has been elected to another office or transferred to another place of work, but also assess whether he/she has been elected to this office or transferred to another place of work with his/her consent (Item 4 of Article 115 of the Constitution), it must not only make sure that a judge has engaged in certain conduct (act), but also to assess whether his/her conduct (act) really discredited the name of judges (Item 5 of Article 115 of the Constitution). If (accordingly) a judge really of his/her own will requests to be released from his/her duties, his/her state of health is really such that he/she may not perform the duties of a judge, he/she has really been elected to another office or transferred to another place of work with his/her consent, or has really discredited the name of judges by his/her conduct, a special institution of judges, as provided for by law and specified in Paragraph 5 of Article 112 of the Constitution, must advise the President of the Republic to release the judge in question from duties. It should be emphasised that, in such cases, the said special institution of judges is not allowed not to advise the President of the Republic to release a judge from duties, and the President of the Republic, after he/she has received such advice, has the powers to release a judge from his/her duties (if a justice of the Supreme Court is released from duties, the President of the Republic has the powers to propose that the Seimas release him/her from duties and, if a judge of the Court of Appeal is released from duties, the President of the Republic has the powers to request assent from the Seimas in order to release him/her from duties); this must be done without delay. But, if a special institution of judges, as provided for by law and specified in Paragraph 5 of Article 112 of the Constitution, holds that (accordingly), even though a judge formally requests to be released from duties of his/her own will, in reality he/she is doing so after he/she has experienced someone's unlawful influence, he/she is under pressure, or is in any other way impermissibly urged by certain persons or organisations (institutions), that, even though a judge has health problems, his/her state of health is not such that he/she would not be able to perform the duties of a judge, that, even though a judge has been elected to another office or transferred to another place of work, it has been done without his/her consent, that, even though a judge has been engaged in certain conduct (act), the said conduct (act) has not discredited the name of judges, the said special institution of judges must not advise the President of the Republic to release the judge in question from duties, and the President of the Republic, when he/she does not receive the advice that such a judge should be released from duties, must not release him/her from duties.

On the other hand, in general, such situations (although, they are very rare) are also possible where, after the President of the Republic has already applied to a special institution of judges, as provided for by law and specified in Paragraph 5 of Article 112 of the Constitution, for advice regarding the release of a judge from duties and after this institution has already advised the President of the Republic to release the judge in question from duties, the grounds on which the said judge must be released from duties disappear. For instance, a judge, after he has stated that he/she intends to resign, may apply to and request the President of the Republic not to release him/her from duties if certain circumstances have changed. In such (exceptional) cases, the President of the Republic has certain freedom of discretion.

It should be emphasised that the impossibility (which arises from the Constitution) for the President of the Republic to release a judge from duties (if a judge to be released from duties is a justice of the Supreme Court, the impossibility for the President of the Republic to propose that the Seimas release him/her from duties and, if a judge to be released from duties is a judge of the Court of Appeal, the impossibility for the President of the Republic to request assent from the Seimas in order to release him/her

from duties) without the advice of a special institution of judges, as provided for by law and specified in Paragraph 5 of Article 112 of the Constitution, is a very important guarantee of the independence of judges and courts, and one of the means that helps judges of all courts of general jurisdiction (as well as judges of all specialised courts established under Paragraph 2 of Article 111 of the Constitution) with no exception to protect themselves from the interference of state power and governance institutions, members of the Seimas and other officials, political parties, political and public organisations, and other persons with the activities of judges or courts, since such interference is *expressis verbis* prohibited (and for such interference the legislature is obliged to provide responsibility) under Paragraph 1 of Article 114 of the Constitution.

A special institution of judges, which is specified in Paragraph 5 of Article 112 of the Constitution, does not have the powers to give advice to the President of the Republic on the release of a judge from duties in cases where he/she is appointed as a justice of the Constitutional Court or as a member of the Government

The Constitutional Court's ruling of 9 May 2006

In its ruling of 21 December 1999, the Constitutional Court held that, taking account of the procedure of the formation of courts that is established in the Constitution, as well as the constitutional regulation of relationships between the President of the Republic and a special institution of judges, as provided for by law and specified in Paragraph 5 of Article 112 of the Constitution, this special institution of judges must advise the President of the Republic on all questions of the appointment of judges, their professional career, as well as on those of their release from duties.

This does not mean that certain exceptions do not stem from the Constitution where it is possible not to apply to this institution on such advice.

When interpreting the quoted provisions of the official constitutional doctrine in the context of other provisions of the Constitution, the Constitutional Court held in its ruling of 2 June 2005 that, under the Constitution, a special institution of judges, as provided for by law and specified in Paragraph 5 of Article 112 of the Constitution, also has no powers to deny or limit the constitutional right of the President of the Republic, the Speaker of the Seimas, and the President of the Supreme Court to present to the Seimas a candidate for the post of a justice of the Constitutional Court and the right of the Seimas to appoint a presented person as a justice of the Constitutional Court or not to appoint him/her, as in such a way the preconditions would be created for impeding the renewal of the Constitutional Court – one of the institutions of state power consolidated in the Constitution. In the said ruling of the Constitutional Court, it was also held that “if such a person is appointed as a justice of the Constitutional Court who holds the office of a judge of a certain court of the Republic of Lithuania at the time of his/her appointment, he/she must be released from his/her duties before his/her oath at the Seimas. If such a person is appointed as a justice of the Constitutional Court who holds the office of a justice of the Supreme Court at the time of his/her appointment, the President of the Republic has the constitutional duty to present that the Seimas release this appointed justice of the Constitutional Court from the office of a justice of the Supreme Court before he/she takes the oath of a justice of the Constitutional Court at the Seimas, while the Seimas has the constitutional duty to release the said person from his/her duties before his/her oath at the Seimas. Otherwise, the appointed justice of the Constitutional Court would be impeded from taking the office of a justice of the Constitutional Court; thus, the reconstitution of the Constitutional Court – an institution of state power consolidated in the Constitution – carried out in accordance with the procedure established in the Constitution would be impeded.” It was also held in the Constitutional Court’s ruling of 2 June 2005 that “under the Constitution, no institution or official has the powers to deny or limit the constitutional right of the Seimas to appoint a nominated person as a justice of the Constitutional Court or not to appoint him/her. ... When the justices of the Constitutional Court are appointed, only the state officials who submit candidates to the Seimas and the Seimas have respective powers. ... a special institution of judges, as provided for by law and specified in Paragraph 5 of Article 112 of the Constitution ... does not have, under the Constitution, any powers to adopt any decisions related to the appointment of the justices of the

Constitutional Court. Thus, under the Constitution, this institution does not have the powers to advise on the release of any judge of the Republic of Lithuania from duties in cases where this judge has been appointed as a justice of the Constitutional Court by the Seimas. ... The cited statements that ‘a special institution of judges, specified in Paragraph 5 of Article 112 of the Constitution, must advise the President of the Republic on all questions of the appointment of judges, those of their professional career, as well as those of their release from duties’ and that ‘advice given by this institution gives rise to legal consequences: if this institution does not give advice, the President of the Republic may not adopt decisions on the appointment, promotion, and transfer of judges or their release from duties’ of the Constitutional Court’s ruling of 21 December 1999 may not be interpreted without taking account of the provisions of the Constitution regulating the procedure for the appointment of the justices of the Constitutional Court. ... before adopting a decision on release from duties of any judge of a court of the Republic of Lithuania who is appointed as a justice of the Constitutional Court, the President of the Republic need not, under the Constitution, apply to a special institution of judges, as provided for by law and specified in Paragraph 5 of Article 112 of the Constitution ... for advice, while the said institution, under the Constitution, does not have the powers to give advice to the President of the Republic on this issue. Otherwise, the preconditions would be created for the said special institution of judges ... for impeding an appointed justice of the Constitutional Court from taking the office of a justice of the Constitutional Court; thus, the reconstitution of the Constitutional Court – an institution of state power consolidated in the Constitution – carried out in accordance with the procedure established in the Constitution, as well as the implementation of a resolution of the Seimas on the appointment of a justice of the Constitutional Court, would be impeded.”

On the basis of analogous arguments, it should be held that, under the Constitution, a special institution of judges, as provided for by law and specified in Paragraph 5 of Article 112 of the Constitution, also has no powers to advise the President of the Republic on the release of a judge from duties in such cases where a judge of any court of the Republic of Lithuania is appointed to another office in cases of forming some other state institution established in Paragraph 1 of Article 5 of the Constitution, which executes state power in Lithuania (except courts of general jurisdiction and specialised courts (established under Paragraph 2 of Article 111 of the Constitution) regarding which explicit provisions are consolidated in the Constitution establishing particular powers of the said special institution of judges to give advice to the President of the Republic).

In view of the fact that, under the Constitution, a judge has no right to be elected a member of the Seimas or the President of the Republic as long as such a judge holds a particular office (ruling of 25 May 2004), it should be held that, under the Constitution, a special institution of judges, as provided for by law and specified in Paragraph 5 of Article 112 of the Constitution, does not have the powers to advise the President of the Republic on the release of a judge from duties in cases where a judge who is released from duties is a judge of a certain court of the Republic of Lithuania appointed as a justice of the Constitutional Court, as well as in cases where a judge who is released from duties is a judge of a certain court of the Republic of Lithuania who (when the Government is formed or its composition is changed) is appointed as a member of the Government (Prime Minister or a minister).

A special institution of judges, which is specified in Paragraph 5 of Article 112 of the Constitution, does not have the powers to give advice on the release of a judge from duties through impeachment proceedings

The Constitutional Court’s ruling of 9 May 2006

... under Articles 74 and 116 of the Constitution, for a gross violation of the Constitution or a breach of the oath, or when they are found to have committed a crime, the President and justices of the Supreme Court, as well as the President and judges of the Court of Appeal (as well as the President and justices of the Constitutional Court), may be removed from office according to the procedure for impeachment proceedings.

Under the Constitution, in such cases, a special institution of judges, as provided for by law and specified in Paragraph 5 of Article 112 of the Constitution, does not have any powers to advise the Seimas whether to remove the President or a justice of the Supreme Court, the President or a judge of the Court of Appeal from office according to the procedure for impeachment proceedings. In such cases, the Constitutional Court – an institution of judicial power – is a counterbalance to decisions of the Seimas – a political institution (conclusion of 31 March 2004).

The application of the President of the Republic to a special institution of judges, which is specified in Paragraph 5 of Article 112 of the Constitution, for advice on the appointment, promotion, and transfer of judges or their release from duties

The Constitutional Court's ruling of 9 May 2006

... under the Constitution, advice given by a special institution of judges, as provided for by law and specified in Paragraph 5 of Article 112 thereof, is necessary when appointing, promoting, transferring, or releasing from duties any judge or the president of a court of general jurisdiction (as well as a judge of a specialised court, established under Paragraph 2 of Article 111 of the Constitution), save the ... exceptions, which stem from the Constitution, when the President of the Republic need not apply for such advice because a judge is released from duties due to the fact that he/she is appointed as a member of the Government (Prime Minister or a minister) or as a justice of the Constitutional Court, as well as when the President or a justice of the Supreme Court and the President or a judge of the Court of Appeal is removed from office according to the procedure for impeachment proceedings. Thus, the President of the Republic must receive such advice also in cases where a judge (of a district or regional court) is appointed or released from duties only by a decision of the President of the Republic, when the Seimas does not participate in general, and in such cases where the President of the Republic applies to the Seimas for assent concerning the appointment or release from duties of a judge or the President of the Court of Appeal, and in such cases where the President of the Republic proposes that the Seimas appoint or release from duties a justice or the President of the Supreme Court. In all these cases (save the discussed exceptions, which stem from the Constitution itself), advice given by a special institution of judges, as provided for by law and specified in Paragraph 5 of Article 112 of the Constitution, is obligatory for the President of the Republic – this is an inseparable, constitutionally obligatory part of the procedure for appointment, promotion (i.e. appointment as a judge of higher level while releasing from previous duties or appointment to a leading or higher post at the same court), transfer (change of the place of work) of judges, and their release from duties. If the President of the Republic has not received such advice, he/she may not appoint or release from duties a judge or President of a district or regional court, may not apply to the Seimas for assent concerning the appointment or release from duties a judge or the President of the Court of Appeal, and may not propose that the Seimas appoint or release from duties a justice or the President of the Supreme Court.

It needs also to be emphasised that the constitutional institution consolidated in Paragraph 5 of Article 112 of the Constitution – the application of the President of the Republic to a special institution of judges, as provided for by law and specified in the same paragraph, for advice concerning the appointment, promotion, and transfer of judges or their release from duties means not only that the President of the Republic has the duty to apply to a special institution of judges, specified in this paragraph, for the respective advice when there is a need to appoint, promote, or transfer a judge or release him/her from duties, but also that this special institution of judges, when it receives an application of the President of the Republic, has the constitutional duty to consider such an application and to advise the President of the Republic (accordingly) to appoint a person as a judge of a district or regional court, to promote or transfer a judge of a district or regional court or release him/her from duties, to apply to the Seimas for assent concerning the appointment, promotion, and transfer of a judge or the President of the Court of Appeal or his/her release from duties, to submit that the Seimas appoint, promote, or transfer a justice of the Supreme Court or release him/her from duties, or to submit that the Seimas appoint or transfer the President of the Supreme Court or release him/her from duties, or to advise the President of the Republic not to appoint a person as a judge of a district or regional court, not to promote or not to transfer a judge of a district or

regional court, or not to release him/her from duties, not to apply to the Seimas for assent concerning the appointment, promotion, and transfer of a judge or the President of the Court of Appeal or his/her release from duties, or not to submit that the Seimas appoint, promote, or transfer a justice of the Supreme Court or release him/her from duties, or not to submit that the Seimas appoint or transfer the President of the Supreme Court or release him/her from duties. When such advice must be given, it is necessary to strictly follow the requirements of the due process of law and to assess the professional preparation of certain persons and such personal qualities (as well as other circumstances) that determine their suitability or unsuitability for the respective position (or for work as a judge in general).

It should be noted that the Constitution does not provide and does not tolerate any such a situation where a special institution of judges, as provided for by law and specified in Paragraph 5 of Article 112 thereof, does not give any advice to the President of the Republic after he/she applies to this special institution of judges for advice concerning the appointment, promotion, and transfer of judges or their release from duties, or when it advises the President of the Republic not on the issue concerning which the President of the Republic has applied; under the Constitution, the said special institution of judges must clearly and unambiguously advise the President of the Republic (accordingly) to appoint a person as a judge, promote or transfer a judge or release him/her from duties (and, if a justice of the Supreme Court or a judge of the Court of Appeal is released from duties, the said special institution of judges must advise the President of the Republic to submit that the Seimas appoint or release him/her from duties) or to advise not to appoint a person as a judge, not to promote or not to transfer him/her, or not to release him/her from duties (and, if a justice of the Supreme Court or a judge of the Court of Appeal is appointed, promoted, transferred, or released from duties, the said special institution of judges must advise the President of the Republic not to submit that the Seimas appoint or release him/her from duties).

It should also be noted that, under the Constitution, also such legal situations are impossible where a special institution of judges, as provided for by law and specified in Paragraph 5 of Article 112 of the Constitution, advises the President of the Republic concerning the appointment of a certain person as a judge, the promotion or transfer of a judge, or his/her release from duties on its own initiative, even though the President of the Republic has not applied to it on such an issue. The said institution may implement the powers established in Paragraph 5 of Article 112 of the Constitution only when (after) the President of the Republic applies to it for advice.

[...]

Attention must also be paid to the fact that, under the Constitution, it is not allowed to establish any such a legal regulation where the President of the Republic, before he/she applies to a special institution of judges, as provided for by law and specified in Paragraph 5 of Article 112 of the Constitution, for advice concerning the appointment, promotion, and transfer of judges or their release from duties would have to coordinate such application with a certain state institution, a certain state official, another institution, or any other person. Under the Constitution, decisions of state institutions, state officials, other institutions, or any other persons may not become binding, nor are they binding, on the application of the President of the Republic to the said special institution of judges for advice.

It is also not allowed to establish, by means of a law, any such a legal regulation whereby, while applying to a special institution of judges, as provided for by law and specified in Paragraph 5 of Article 112 of the Constitution, for advice concerning the appointment of a person as a judge, or the promotion or transfer of a judge, the President of the Republic would be obliged to submit to this special institution of judges not one, but more candidates for the same vacancy, and where the said special institution of judges would have to and/or be able to choose from persons submitted by the President of the Republic and to advise the President of the Republic concerning the appointment of such a person as a judge, or his/her promotion or transfer.

... the Constitution does not imply the possibility of establishing any such a legal regulation whereby persons who pass the required examination or examinations and are included in the list of candidates for the post of a judge would be somehow rated, their priority or different lists would be drawn, etc., which would be binding on the President of the Republic when he/she would apply to a special institution of

judges, as provided for by law and specified in Paragraph 5 of Article 112 of the Constitution, for advice concerning the appointment of judges. It also needs to be emphasised that the President of the Republic may choose persons concerning the appointment of whom as judges he/she applies to a special institution of judges, as provided for by law and specified in Paragraph 5 of Article 112 of the Constitution, only from those who have passed the required examination or examinations and are included in the list of candidates for the post of a judge, or from other persons who may hold the office of a judge without examinations if this is constitutionally justifiable.

[...]

As, under the Constitution, only the President of the Republic may apply for advice to a special institution of judges, as provided for by law and specified in Paragraph 5 of Article 112 thereof, the President of the Republic, before applying for the said advice, after he/she has made use of the possibilities established by law (*inter alia*, after the President of the Republic has demanded the respective information from state institutions (officials)), must verify and assess all significant circumstances, *inter alia*, the fact whether a person who is proposed to be appointed as a judge, or a judge proposed to be transferred or promoted meets the requirements established for a judge (as well as for a judge of a court of the same system of courts or of a court of the same level), whether he/she has qualification necessary for particular work, is of impeccable reputation, and whether there are any other circumstances due to which a person may not be appointed as a judge, or may not be promoted or transferred (or may not be appointed namely as a judge of the court specified by the President of the Republic, may not be promoted by appointing him/her namely to the specified court, or may not be transferred namely to the specified court).

Under Article 85 of the Constitution, the President of the Republic, implementing the powers vested in him/her, issues acts-decrees. The constitutional powers of the President of the Republic to apply to a special institution of judges, as provided for by law and specified in Paragraph 5 of Article 112 of the Constitution, for advice concerning the appointment, promotion, and transfer of judges or their release from duties are implemented by issuing the respective decree of the President of the Republic. In such a decree of the President of the Republic, the time period within which advice must be received may also be specified. If such a time period is specified in a decree of the President of the Republic, a special institution of judges, as provided for by law and specified in Paragraph 5 of Article 112 of the Constitution, must observe the said time period.

The transparency requirement for the activity of a special institution of judges, which is specified in Paragraph 5 of Article 112 of the Constitution

The Constitutional Court's ruling of 9 May 2006

... a special institution of judges, provided for by law specified in Paragraph 5 of Article 112 of the Constitution, is a counterbalance to the President of the Republic – a political institution of state power – in the area of the formation of the corps of judges. This implies that the activity of this special institution of judges must be transparent so that neither the President of the Republic nor society would have reasoned doubts regarding the formed corps of judges, as then public trust in law and in the legal system of the state would in general decrease; thus, advice given by the said special institution of judges to the President of the Republic must be rationally argued and reasons due to which it advises the President of the Republic to appoint a certain person as a judge, promote or transfer a judge, or release him/her from duties or not to appoint a person as a judge, not to promote, not to transfer a judge, and not to release a judge from duties (and, if a justice of the Supreme Court or a judge of the Court of Appeal is appointed, promoted, transferred, or released from duties, the said special institution of judges advises the President of the Republic to propose or not to propose him/her as a candidate to be approved by the Seimas) must be set out clearly. No advice (or other decisions) of the said special institution of judges may be based on assumptions, subjective prejudice, or opinions of members of the said special institution of judges, it is necessary to ground such advice only upon established (elucidated) facts after assessing the professional preparation of certain persons and such personal qualities (as well as other circumstances) that determine their suitability or unsuitability for the respective position (or for work as a judge in general). In this context, it should be

noted that, taking account of the fact that public trust in law and in the legal system of the state virtually depends on the activity and decisions of the said special institution of judges, the legislature, while regulating relationships linked to the activity of the said special institution of judges, as provided for by law and specified in Paragraph 5 of Article 112 of the Constitution, may also establish such a legal regulation whereby, if the said special institution of judges irresponsibly implemented the powers established for it in the Constitution, its composition could be changed in essence; the establishment of such a legal regulation implies that the procedure for settling disputes that may arise due to particular decisions must also be established; when establishing the said legal regulation, the legislature must pay regard to the Constitution.

Constitutional requirements for the formation, activity, and work organisation of a special institution of judges, which is specified in Paragraph 5 of Article 112 of the Constitution

The Constitutional Court's ruling of 9 May 2006

Taking account of the mission and constitutional status of a special institution of judges, as provided for by law and specified in Paragraph 5 of Article 112 of the Constitution, as well as of an exclusive role of the said institution in the procedure of the formation of the corps of judges, it needs to be held that certain requirements stem from the Constitution concerning the activity of this state institution and the organisation of its work.

For instance, before advising the President of the Republic on the appointment, promotion, and transfer of a judge of a certain court of general jurisdiction or a specialised court, established under Paragraph 2 of Article 111 of the Constitution, or on releasing him/her from duties, the said special institution of judges has the duty to elucidate and assess all significant circumstances, *inter alia*, the fact whether a person who is proposed to be appointed as a judge, or a judge proposed to be transferred or promoted meets requirements established for a judge (as well as for a judge of a court of the same system of courts or a court of the same level), whether he/she has qualification necessary for particular work, whether he/she is of impeccable reputation, and whether there are any other circumstances due to which a person may not be appointed as a judge or may not be promoted or transferred (or may not be appointed namely as a judge of the court specified by the President of the Republic, or may not be promoted by appointing him/her namely to the specified court, or may not be transferred namely to the specified court). The legislature has the duty to establish such a legal regulation that the said special institution of judges would have the powers to receive all necessary information from state and municipal institutions (officials thereof) that would allow verifying and assessing all significant circumstances. Responsibility for giving advice to the President of the Republic falls namely on the said special institution of judges to which the President of the Republic applies for advice. The fact that, as it has been held in this ruling of the Constitutional Court, the President of the Republic, before applying to this special institution of judges for advice, must make use of the possibilities established by law and verify and assess all significant circumstances does not relieve the said special institution of judges from this duty and responsibility.

It is clear that the members of a special institution of judges, as provided for by law and specified in Paragraph 5 of Article 112 of the Constitution, must verify and assess all significant circumstances, *inter alia*, the fact whether a person who is proposed to be appointed as a judge, or a judge proposed to be transferred or promoted meets requirements established for a judge (as well as for a judge of a court of the same system of courts or of a court of the same level), whether he/she has qualification necessary for particular work, whether he/she is of impeccable reputation, and whether there are any other circumstances due to which a person may not be appointed as a judge, or promoted and transferred (or appointed namely as a judge of a court specified by the President of the Republic, promoted appointing him/her namely to a specified court, transferred him/her namely to a specified court) only when they receive in advance all information necessary in order to consider a certain question, have the possibility of investigating it attentively, may demand additional information if necessary, etc. The work of the said special institution of judges may not be organised in such a way that certain information concerning a considered question would be provided not on time and not in advance, but only at a meeting of this special institution of judges,

as well as that certain information concerning a considered question would be provided not to all members of this special institution of judges, but only to some of them (selectively), for example, only to those members of this special institution of judges who participate in that meeting. In this context, particularly taking account of the fact that, under the Constitution, the President of the Republic must receive advice namely from a special institution of judges, as provided for by law and specified in Paragraph 5 of Article 112 of the Constitution, as a collegial state institution, and not from part of it (i.e. a group of judges) concerning the appointment, promotion, and transfer of a judge or his/her release from duties, it should be noted that, in general, it would not be possible to consider the activity of the said special institution of judges, which, as it has been held in this ruling of the Constitutional Court, is a state institution provided for in the Constitution and not a certain body working on a pro-bono basis, as fully conforming to its constitutional mission if a large number of its members did not participate in its meetings. It should also be noted that the work of the said special institution of judges must be organised in such a way that voting on every advice to the President of the Republic during a meeting would take place, that, after such voting is over, every member of this special institution of judges would know how every other member of this special institution of judges voted, and that the results of voting would not raise any doubts regarding their reliability. Failure to pay regard to the said provisions would mean that the requirements of the due process of law, which are binding in a state under the rule of law, are deviated from in essence.

It should be particularly emphasised that the mission and constitutional status of a special institution of judges, as provided for by law and specified in Paragraph 5 of Article 112 of the Constitution, an exclusive role of the said institution in the procedure of the formation of the corps of judges, as well as the transparency requirement for its activity, imply the publicity of the activity of this special institution of judges. The fact that the activity of the said special institution of judges must be public means that, in addition to other things, society (as well as the legal community) must be informed in advance (it should be publicly announced) about all questions on the appointment, promotion, and transfer of a judge or his/her release from duties to be considered by this special institution of judges. It has been held in this ruling of the Constitutional Court that advice given by the said special institution of judges to the President of the Republic must be argued rationally and reasons must be set out clearly due to which it advises the President of the Republic to appoint a certain person as a judge, to promote or transfer a judge, or to release him/her from office or not to appoint a person as a judge, not to promote, or not to release a judge from duties (and, if a justice of the Supreme Court or a judge of the Court of Appeal is appointed, promoted, or transferred or released from duties, the said special institution of judges advises the President of the Republic to propose or not to propose him/her as a candidate to be approved by the Seimas). These arguments and reasons must be set out clearly. Society must be informed about adopted decisions (about advice to the President of the Republic). It should also be emphasised that, when the President of the Republic applies for advice, each member of the said special institution of judges must declare his/her position on each question clearly and unambiguously.

Only the following powers of a special institution of judges, as provided for by law and specified in Paragraph 5 of Article 112 of the Constitution, are explicitly consolidated in the Constitution (Paragraph 5 of Article 112 thereof): when the President of the Republic applies to the said institution, it must advise him/her on the appointment, promotion, and transfer of judges or their release from duties, i.e. as held in the Constitutional Court's ruling of 21 December 1999, "concerning all questions of the appointment of judges, those of their professional career, as well as those of their release from duties", save (as held in the Constitutional Court's ruling of 2 June 2005 and in this ruling of the Constitutional Court) the exceptions that stem from the Constitution itself (of which there are very few). It should be emphasised that no other institution, official, or any other person may exercise these powers; the said powers may not be transferred to anybody by a special institution of judges itself, which is provided for by law and is specified in Paragraph 5 of Article 112 of the Constitution. If this were the case and if the legislature also restricted the powers explicitly assigned to such a special institution of judges in the Constitution, then not only Paragraph 5 of Article 112 of the Constitution, but also Paragraph 2 of Article 5 of the Constitution, under

which the scope of powers is limited by the Constitution, as well as the constitutional principle of a state under the rule of law, would be violated.

It should be emphasised that the interpretation of the meaning of the phrase “a special institution of judges shall advise” of Paragraph 5 of Article 112 of the Constitution may not be based only on the verbal and literal interpretation of the notions used therein; this phrase should be interpreted by taking account of the procedure for the formation of the corps of judges, which is consolidated in various articles (paragraphs thereof) of the Constitution, under which different powers are established for state power institutions and other institutions that participate in the formation of the corps of judges: the Seimas or the President of the Republic – political institutions – appoint judges and release them from their duties, while an institution of the judiciary, i.e. an autonomous and self-governing institution of independent state power, which, as judicial power in general, is not political, but only professional, gives advice to the President of the Republic on the appointment, promotion, and transfer of judges or their release from duties.

Thus, the phrase “a special institution of judges shall advise” of Paragraph 5 of Article 112 of the Constitution means that, firstly, the said state institution must be composed for the purpose specified in this paragraph – to advise the President of the Republic on the appointment, promotion, and transfer of judges or their release from duties; secondly, this state institution must be composed only of judges. It should be held that, under the Constitution, no other institution, official, or any other person may have the powers to advise the President of the Republic on the appointment, promotion, and transfer of judges or their release from duties; in addition, under the Constitution, the institution specified in Paragraph 5 of Article 112 of the Constitution may be composed not of any persons (members), but only of judges; otherwise, i.e. if this institution were composed not of judges or not exclusively of judges, the constitutional concept (that, during the formation of the corps of judges, the said special institution of judges is a counterbalance to the President of the Republic – a political institution) of the state institution – a special institution of judges – that is consolidated in this paragraph would be disregarded; under the Constitution, such an institution may not have the powers specified in Paragraph 5 of Article 112 of the Constitution to advise the President of the Republic on the appointment, promotion, and transfer of judges or their release from duties. Only an institution that is formed on a professional basis, i.e. a special institution of judges, may properly assess whether the professional qualification of a person is such that he/she may be appointed as a judge, whether a person who already is a judge may be promoted, etc. Only an institution formed on a professional basis, i.e. a special institution of judges, may be a counterbalance to the President of the Republic – a subject of executive power and a political institution – in the formation of the corps of judges. Only such an institution may ensure the independence of judges and courts, *inter alia*, from the aspect that judges of all courts with no exception would be protected from interference by state power and government institutions, members of the Seimas and other officials, political parties, political and public organisations in the activity of judges or courts (... such interference is *expressis verbis* prohibited by Paragraph 1 of Article 114 of the Constitution). The phrase “a special institution of judges shall advise” may not be interpreted expansively as meaning that it also does not prohibit the establishment of such a legal regulation whereby it would be possible to include not exclusively judges to this institution of judges, because such an expansive interpretation of the constitutional expression “a special institution of judges shall advise” and the legal regulation based on it would create the preconditions for disregarding the principle of the independence of courts (which also includes the self-governance of judicial power), which is consolidated in the Constitution, *inter alia*, from the aspect that the President of the Republic would be advised on the appointment, promotion, and transfer of judges or their release from duties by an institution that would be composed not only of judges, but also of other persons (even politicians), which would be unable to assess from the professional point of view whether persons aspiring to become judges meet requirements established for a judge, *inter alia*, whether such persons have professional qualification necessary for the office of a judge, whether a judge has sufficient professional qualification in order to be promoted, etc. By such a legal regulation where a special institution of judges, as provided for by law and specified in Paragraph 5 of Article 112 of the Constitution, would be composed not only of judges but also other persons, not only the constitutional concept of a special institution of judges, as provided for by law and

specified in Paragraph 5 of Article 112 of the Constitution, but also Paragraph 2 of Article 5 of the Constitution, in which it is prescribed that the scope of powers is limited by the Constitution, as well as the constitutional principle of a state under the rule of law, would be disregarded.

The phrase “a special institution of judges, as provided for by law” of Paragraph 5 of Article 112 of the Constitution means that the legislature has broad discretion to regulate in one or another way the formation, powers, and activity of this state institution – a special institution of judges provided for in this paragraph (of course, paying regard to the Constitution, *inter alia*, the constitutional concept of the said special institution of judges). ...

[...]

It has been mentioned that, under the Constitution, the legislature has the powers to establish the procedure for the formation of a special institution of judges, as provided for by law and specified in Paragraph 5 of Article 112 of the Constitution. Such a procedure must be established in the Law on Courts. While establishing such a procedure, the legislature may not disregard, *inter alia*, the circumstance that no official of judicial power may be treated as the head of whole judicial power or as a representative thereof in relationships with other state powers and that, under the Constitution, self-governing judicial power may not be too centralised in general. The independence of judges, which is consolidated in the Constitution, implies the equal legal status of all judges while administering justice: it is not allowed to establish different guarantees of the independence of judges when they administer justice (decide cases); while administering justice, no judge is or may be subordinate to any other judge or the president of any court (*inter alia*, of a court where he/she works, as well as of a court of higher level or instance). It is also necessary to pay regard to the circumstance that the self-governance of the judiciary as an independent state power and the equal legal status of judges also imply, *inter alia*, the fact that, in judicial self-governance institutions, all judges have an equal legal status; thus, in self-governance institutions of judicial power they are equal and not subordinate to any other judge (or to a judge or the president of a court of higher level or instance). Thus, in self-governance institutions of judicial power, no judge may have more rights than any other judge. Thus, under the Constitution, the legislature may not consolidate any such a legal regulation that a certain judge *ex officio* (by virtue of his/her office) could become the head of a special institution of judges, which is provided for by law and is specified in Paragraph 5 of Article 112 of the Constitution. It should be held that the Constitution tolerates only such election procedure of the head (person holding chairmanship) of a special institution of judges, as provided for by law and specified in Paragraph 5 of Article 112 of the Constitution, where the head (person holding chairmanship) of this special institution of judges is elected by members of this institution themselves or at a democratically convened meeting of judges (or representatives thereof) (which may also elect members of this special institution of judges). A different legal regulation, i.e. such that a certain judge (president of a certain court) is *ex officio* the head of a special institution of judges, as provided for by law and specified in Paragraph 5 of Article 112 of the Constitution, would not be in line, *inter alia*, with the principle of self-governance of the judiciary as one of state powers consolidated in the Constitution, as well as with the constitutional principle of a state under the rule of law.

In this context, it should be noted that also the rotational heading (chairmanship) of the said special institution of judges would be in line with the principle of self-governance of the judiciary as one of state powers consolidated in the Constitution and with the decentralisation of self-governing judicial power.

The possibility of certain judges *ex officio* to be members of a special institution of judges, as provided for by law and specified in Paragraph 5 of Article 112 of the Constitution, should be assessed in a slightly different way.

The said constitutional imperatives (the decentralisation of self-governing judicial power, the independence of judges, the equal status of all judges who administer justice, the non-subordination of a judge to any other judge or the president of any other court while administering justice, etc.) imply a democratic procedure for the formation of this special institution of judges. Thus, under the Constitution, members of this special institution of judges, at least an absolute majority of them, must be democratically elected by judges (representatives thereof) themselves; the procedure for an election must be such that it must be organised and executed in such a manner that would create no preconditions for doubting the

democratic nature of this election, *inter alia*, the fact whether during an election of the said special institution of judges some judges were treated unequally with respect to others, etc.

It also needs to be noted that such a legal regulation that some judges (comparatively small part of the members thereof), namely the Presidents of the Supreme Court of Lithuania, the Court of Appeal of Lithuania, and specialised courts (established under Paragraph 2 of Article 111 of the Constitution) would *ex officio* become members of the said special institution of judges would not be in conflict with the Constitution. Such a legal regulation that members of the said special institution of judges would be judges elected by a rather large social organisation of judges, which unites judges of courts of the Republic of Lithuania, would not be in conflict with the Constitution, either; however, it should be emphasised that such judges must compose only a comparatively small part of members of the said special institution of judges; in this case, the procedure for the election must be such and the election must be organised in such a manner that would create no preconditions for doubting the democratic nature of this election. Such a legal regulation that a comparatively small part of members of this special institution of judges would be appointed by the President of the Republic and/or the Minister of Justice would not be in conflict with the Constitution, either (ruling of 21 December 1999).

In this context, it should be emphasised that the fact that some members of a special institution of judges may be appointed by the President of the Republic and/or the Minister of Justice may in no way be interpreted as meaning that these judges are representatives or proxies of the President of the Republic or of the Minister of Justice in the specified special institution of judges: under the Constitution, it is not allowed to establish such a legal regulation that such judges would, in some way, have to give an account for their activities in a special institution of judges, as provided for by law and specified in Paragraph 5 of Article 112 of the Constitution, to the President of the Republic and/or Minister of Justice so that the President of the Republic and/or the Minister of Justice would give them any assignments, orders, etc. If the Law on Courts established such a legal regulation that the President of the Republic and/or the Minister of Justice appoints some members of a specified special institution of judges, the said judges, when they become members of this special institution of judges not by election, but by the said appointment, must still remain absolutely independent from the President of the Republic and/or the Minister of Justice who appointed them. A different legal regulation, i.e. such where judges who became members of a special institution of judges, as provided for by law and specified in Paragraph 5 of Article 112 of the Constitution, not by election, but they were appointed by the President of the Republic and/or the Minister of Justice, would be treated as representatives or proxies of these state officials in the specified special institution of judges, would be incompatible, *inter alia*, with the principle of self-governance of the judiciary as one of state powers consolidated in the Constitution, as well as with the constitutional principle of the separation of powers and the constitutional principle of a state under the rule of law.

The powers of a special institution of judges, as provided for by law and specified in Paragraph 5 of Article 112 of the Constitution, where such powers are indicated in this paragraph, imply such a procedure for the formation of this special institution of judges where judges of courts of general jurisdiction of various levels and of specialised courts (at present – administrative courts), established under Paragraph 2 of Article 111 of the Constitution, would be its members. This would be ensured by such a legal regulation that a certain number of positions in the specified special institution of judges would be provided for to every level of courts of general jurisdiction and to every level of specialised courts (at present – administrative courts), established under Paragraph 2 of Article 111 of the Constitution, and that particular members of this special institution of judges (having regard to the number established for that level of courts) would be elected by judges of namely a court (courts) of a particular level.

The fact that a special institution of judges, as provided for by law and specified in Paragraph 5 of Article 112 of the Constitution, has the constitutional powers to advise the President of the Republic, *inter alia*, on the promotion of judges (as well as on the appointment of judges, their transfer, or their release from duties) means that this special institution of judges also has the powers to assess the qualification of judges. It has been mentioned that advice must be given to the President of the Republic only after the professional preparation of certain persons has been assessed. Whether judges of courts of

lower level have such qualification and are professionally prepared in such a way that they could be promoted (*inter alia*, could be appointed as judges of courts of higher level) may be best decided by judges (undoubtedly, not exclusively by them) of namely such courts that are the highest instance of appeal and the highest instance of cassation. Thus, such a legal regulation whereby such a number of positions would be established in a special institution of judges, as provided for by law and specified in Paragraph 5 of Article 112 of the Constitution, for judges of every level of courts of general jurisdiction, as well as for judges of specialised courts (at present – administrative courts), established under Paragraph 2 of Article 111 of the Constitution, where judges of the Supreme Court of Lithuania, the Court of Appeal of Lithuania, and those of the highest instances of specialised courts, established under Paragraph 2 of Article 111 of the Constitution (at present, in the system of administrative courts – judges of the Supreme Administrative Court of Lithuania) would comprise the majority of members of this special institution of judges would be constitutionally justifiable.

It has been mentioned that a special institution of judges, as provided for by law and specified in Paragraph 5 of Article 112 of the Constitution, must be composed only of judges. The constitutional status of this special institution of judges implies that certain high requirements may and must be established for its members: only judges who have high qualification, who are sufficiently experienced in their work as a judge, and who earned authority in the professional community of judges may be its members. It has been held in this ruling of the Constitutional Court that the procedure for the election of the said special institution of judges must be such and the election must be organised in such a manner that would create no preconditions for doubting the democratic nature of this election.

The powers of a special institution of judges, which is specified in Paragraph 5 of Article 112 of the Constitution

The Constitutional Court's ruling of 9 May 2006

As such, the fact that only the powers of a special institution of judges, as provided for by law and specified in this paragraph, to advise the President of the Republic on the appointment, promotion, and transfer of judges or their release from duties when he/she applies to it are explicitly consolidated in the Constitution (Paragraph 5 of Article 112 thereof) does not mean that the said special institution of judges may have only the powers explicitly specified in Paragraph 5 of Article 112 of the Constitution and may not have other powers established for it by the legislature in the Law on Courts.

In this context, it should be noted that the constitutional powers of a special institution of judges, which is specified in Paragraph 5 of Article 112 of the Constitution, are related to the participation in adopting decisions on the career of judges where such decisions are adopted by the judiciary as the branch of state power formed on a professional basis and by certain members of the corps of judges, who implement judicial power and, in accordance with a procedure prescribed by law, are appointed or elected to the said special institution of judges. This also implies the right of the legislature to establish such powers of the said special institution of judges that are not *expressis verbis* established in the Constitution (Paragraph 5 of Article 112 thereof), but arise from the constitutional powers of this special institution of judges, which are related to advising the President of the Republic on the appointment, promotion, and transfer of judges or their release from duties, i.e. the powers related to the participation of the judiciary, as state power formed on a professional basis, in adopting decisions on the career of judges, as well to ensuring the possibilities of persons to pursue the career of a judge. For instance, the Constitution does not prohibit stipulating, by means of a law, that this special institution of judges has the powers to initiate disciplinary actions against judges, the powers to appoint members of the examination commission of judges, etc. (ruling of 21 December 1999).

The judicial self-governance institutions

The Constitutional Court's ruling of 9 May 2006

... it is clear from the official constitutional doctrine of the judiciary formed in previous constitutional justice cases of the Constitutional Court that a special institution of judges, which is specified in Paragraph 5 of Article 112 of the Constitution, is not the only element of the self-governance of the judiciary as an independent state power. Under the Constitution, the legislature, while paying regard to the constitutional principle of the independence of judges and courts and other provisions of the Constitution, also has the powers to establish, by means of a law, other self-governance institutions of the judiciary, to establish the procedure of their formation, powers, etc. Moreover, while seeking to ensure the effectiveness of the self-governance of the judiciary and in view of the fact that, as it has been held in this ruling of the Constitutional Court, under the Constitution, the self-governing judiciary must not be too centralised, certain such other institutions must be formed (first of all, a meeting of judges (or their representatives), provided for by law, must be democratically convened, without which the self-governance of the judiciary as a fully fledged and independent branch of state power is, in general, impossible). While regulating the relationships related to the formation of such institutions, the legislature has broad discretion.

However, it needs to be noted that, if the legislature chose such a model of the self-governance of the judiciary where, along with a democratically convened meeting of judges (or representatives thereof), provided for by law, there would be only one self-governance institution of judges implementing, *inter alia*, the powers established in Paragraph 5 of Article 112 of the Constitution to advise the President of the Republic on the appointment, promotion, and transfer of judges or their release from duties, together with the legal (*inter alia*, procedural) mechanisms prohibiting the excessive centralisation of the self-governing judiciary, this would not in itself mean that the concept of the judiciary as independent and self-governing state power, which is consolidated in the Constitution, would be deviated from.

It should be noted that after the legislature has consolidated various self-governance institutions of the judiciary as an independent state power in the Law on Courts (i.e. after the legislature has chosen such self-governance model of the judiciary under which there are several mentioned institutions), it (particularly taking account of the necessity to ensure public trust in judicial power, law, and the legal system of the state) may also establish, by means of a law, such a legal regulation that the said other self-governance institutions of courts would include not only judges, but also other persons. In itself, this should not be regarded as the denial of the self-governance and independence the judiciary, nor should this be regarded as the denial of the fact that the judiciary is fully fledged. However, in such a case, judges must also form an absolute majority of members of such self-governance institutions of the judiciary as an independent state power; moreover, the heads (persons holding chairmanship) of such institutions must also be exclusively judges.

... it should be particularly emphasised that, if a law established such a legal regulation that certain self-governance institutions of the judiciary would include not only judges, but also other persons, under the Constitution, such institutions would be unable to exercise the powers specified in Paragraph 5 of Article 112 of the Constitution, i.e. to advise the President of the Republic on the appointment, promotion, and transfer of judges or their release from duties, since Paragraph 2 of Article 5, Paragraph 5 of Article 112 of the Constitution, and the principle of a state under the rule of law would be violated. As it has been mentioned in this ruling of the Constitutional Court, the said powers exclusively belong to a special institution of judges, which is specified in Paragraph 5 of Article 112 of the Constitution, i.e. such an institution that, under the Constitution, is composed only of judges (and that is, first of all, formed for the purpose specified in this paragraph).

The right of a judge released from duties to apply to a court

The Constitutional Court's ruling of 9 May 2006

... a judge who believes that he/she has been released from duties groundlessly and unlawfully has the right, under the Constitution, to apply to a court regarding the defence of his/her violated right. The Constitutional Court has held in its acts more than once that the right of a person who believes that his/her rights or freedoms are violated to apply to a court is an absolute one, that this right may not be artificially restricted or its implementation may not be unreasonably impeded, that it is not permitted to deny this right,

as well as that, under the Constitution, the legislature has the duty to establish such a legal regulation whereby all disputes regarding any violation of the rights or freedoms of persons may be decided in a court.

The legal regulation governing the formation of the corps of judges and their professional careers

The Constitutional Court's ruling of 9 May 2006

Under the Constitution, the legislature has the powers (while paying regard to the norms and principles of the Constitution) to establish selection criteria for persons who wish to become judges, as well as to establish how the corps of candidates for the position of a judge is formed, the corps of candidates for the positions of judges of courts of higher level is formed, etc. The legal regulation establishing this may be differentiated, *inter alia*, according to the level of a court in which a person seeks to become a judge. The Constitution also does not prohibit establishing such a procedure for forming the corps of persons aspiring to become judges where persons who have university higher education in law and aspire to become judges must pass a special examination or examinations in which it is assessed whether a person has sufficient professional knowledge in order to hold the office of a judge. ...

It should also be emphasised that, even though the dominant principle of the formation of the corps of judges of courts of higher level is the principle of the professional career of judges (where judges are promoted after they are released from previous duties and appointed as judges of courts of higher level), under the Constitution, it is not permitted to establish any such a legal regulation whereby exclusively judges would be able to become judges of courts of higher level. The establishment of such a legal regulation and treating the principle of the professional career of judges unreservedly would create the preconditions for the system of courts to become too closed, to become subjected to a routine, etc.

The powers of the presidents of courts

The Constitutional Court's ruling of 9 May 2006

... under the Constitution, the presidents of all levels of courts of general jurisdiction, as well as of specialised courts (at present – administrative courts), established under Paragraph 2 of Article 111 of the Constitution, have no other powers except those that are assigned to them as judges of a particular court, who must administer justice – decide cases, as well as the powers arising from the Constitution and laws to organise the activity of a particular court, which are assigned to them as the heads of institutions – particular courts. *Inter alia*, such powers of the presidents of courts of higher level as the initiation of disciplinary cases (other cases of a similar nature) against judges and the presidents of the respective courts of lower level arise from the institutional system of courts, which is consolidated in the Constitution, as well as from the hierarchy thereof. However, in relationships with other state institutions or other state officials, the Constitution does not give rise to any such powers of the president of any court of general jurisdiction, without excluding the Supreme Court or specialised courts (at present – administrative courts), established under Paragraph 2 of Article 111 of the Constitution, that would determine decisions adopted by other state institutions or officials thereof or on which the said decisions would essentially depend.

Extending the powers of judges

The Constitutional Court's ruling of 9 May 2006

... the Constitution does not in essence prevent such a legal regulation established by means of a law where a judge, despite the fact that his/her term of powers expires or he/she reaches the pensionable age established by law, may still hold his/her office for a certain period of time until the consideration of certain cases is finished (until final decisions therein are adopted) where the consideration of the said cases is not finished at the time (on the day) when the term of powers of that judge expires or when he/she reaches the pensionable age established by law. Such an exceptional legal regulation would be constitutionally justifiable, since, otherwise, i.e. without establishing such a legal regulation, the decision of particular cases – the administration of justice – would slow down; thus, the preconditions would be created for

injuring the rights and legitimate interests of persons and certain constitutional values would be violated. However, it should be emphasised that, in every case on such extension of the powers of a judge, which is allowed only in exceptional cases, a certain legal act – a decree of the President of the Republic or (if the powers of a justice of the Supreme Court are extended) a resolution of the Seimas – must be passed. In every such a case, advice given by a special institution of judges, as provided for by law and specified in Paragraph 5 of Article 112 of the Constitution, on the extension of powers is necessary (and if the powers of a judge of the Court of Appeal are extended, the assent of the Seimas is also necessary); such advice given by the said special institution of judges to extend the powers of a judge also means its advice to release the judge from duties as soon as the respective legal fact happens – the consideration of particular cases is finished; thus, the advice of the said special institution of judges to extend the powers of a judge also means that the powers of a judge must be discontinued in accordance with the established procedure when the respective legal fact related to the extension of the powers of a judge happens – the consideration of particular cases is finished. ... when this legal fact related to the extension of the powers of a judge happens, the President of the Republic need not once again apply to a special institution of judges, as provided for by law and specified in Paragraph 5 of Article 112 of the Constitution, on the release of the said judge from duties when his/her powers expire or when he/she reaches the pensionable age established under the law (since the respective advice has already been received).

Regard must also be paid to the fact that the said constitutionally reasoned exception to the general constitutional prohibition on extending the powers of a judge when they expire or when a judge reaches the pensionable age may not be interpreted as, purportedly, meaning that the powers of the presidents of courts or the chairpersons of divisions of courts may be extended on any similar basis.

[...]

Such a legal regulation where the possibility of extending the term of powers of judges upon their expiry (irrespective of the term for which the powers of the judge are extended and of the level of a court the powers of a judge of which are extended) is provided may create the preconditions for other persons to try to influence a judge directly or indirectly in order that he/she, when seeking the extension of his/her powers, would make certain decisions in cases considered by him/her; such a legal regulation should be regarded as enabling someone to induce a judge to consider cases and adopt decisions in them not only by obeying the law, as required by the Constitution (Paragraph 3 of Article 109), but also by bearing in mind the fact how decisions adopted in cases considered by him/her will influence the possibility of extending his/her powers in the future. In other words, such a legal regulation would create the preconditions for a judge for adopting such decisions in cases considered by him/her that would correspond not to his/her concept of justice, but would correspond to the concept of justice as understood by other persons.

Thus, such a legal regulation that provides for the possibility of extending the powers of judges upon their expiry, save the exceptions allowed by the Constitution itself, is incompatible with the principle of the independence of judges and courts, which is consolidated in the Constitution, with Paragraph 2 of Article 109 of the Constitution, whereby, when administering justice, judges and courts are independent, with Paragraph 3 of this article, which prescribes that, while considering cases, judges obey only the law, and with the constitutional principle of a state under the rule of law.

The prohibition on extending the powers of the presidents of courts (chairpersons of divisions of courts and other judges fulfilling administrative duties)

The Constitutional Court's ruling of 9 May 2006

The concept of the professional career of judges also includes such cases where a judge is appointed as the president of a certain court, as the chairperson of a division of a certain court, etc. If judges are appointed as the said presidents of courts, chairpersons of divisions of courts, or as ones that must fulfil certain other administrative duties for a certain time period established by law, after the said time period is over, they must be released from their duties; therefore, as well as when appointing them to that office, the respective individual law-applying act on their release from duties must be adopted. The powers of the presidents of courts, the chairpersons of divisions of courts, and other judges who fulfil administrative

duties in courts may not be extended by means of a law or by any other legal act establishing general norms – in general, such powers may not be extended as, after the term of powers expires, such powers cease (i.e. an individual law-applying act must be adopted concerning this issue), and then, in accordance with a procedure prescribed by law, it must be decided anew whether the same judge (if laws provide for such a possibility) or another person must be appointed as the president of a court, the chairperson of a division of a court, etc.

The constitutional status of judges

The Constitutional Court's ruling of 22 October 2007

The function of the administration of justice determines an exceptional constitutional status of judges, which is revealed in various constitutional provisions that consolidate the independence of judges and courts when administering justice (Paragraph 2 of Article 109 of the Constitution), the impossibility for a judge to hold any other elective or appointive office, to work in any business, commercial, or other private establishments or enterprises, to receive any remuneration other than the remuneration established for judges and payment for educational or creative activities, and to take part in the activities of political parties and other political organisations (Article 113 of the Constitution), the prohibition on interfering with the activity of a judge and the inviolability of the person of a judge (Article 114 of the Constitution), etc. Under Article 104 of the Constitution, the limitations established on work and political activities for the judges of courts also apply to the justices of the Constitutional Court (Paragraph 3); the justices of the Constitutional Court have the same rights concerning the inviolability of their person as the members of the Seimas (Paragraph 4).

The grounds for releasing judges from duties (cessation of powers) and the influence of such grounds on establishing and applying the social guarantees of judges after their powers cease (Articles 108 and 115 of the Constitution)

See 9.1.3. The independence of judges and courts and the guarantees of their independence, the ruling of 22 October 2007.

Requirements for the professional qualification (education) of judges (applicants for the positions of judges) (on requirements for the professional qualification of lawyers, see 2. The constitutional status of persons, 2.4. Economic, social, and cultural rights, 2.4.1. Economic rights, 2.4.1.2. The right to work, 2.4.1.2.2. Professional competence requirements; as regards the official constitutional doctrine related to higher education in law, see 2.4.3. Cultural rights, 2.4.3.1. The right to education, 2.4.3.1.2. The right to seek higher education)

The Constitutional Court's ruling of 20 February 2008

... Since, in a state under the rule of law, when deciding cases (settling disputes) in which parties to a case are, as a rule (and, in complex cases, virtually always), represented by professional lawyers, the last word always belongs to the court, it is no coincidence that in countries of mature legal culture it is recognised that the activity of judges draws guidelines to the entire legal profession and the legal practice in that country. Therefore, there must be no doubts as to the fact that, in a state under the rule of law (and the Constitution of the Republic of Lithuania consolidates *expressis verbis* the striving for a state under the rule of law), the highest possible professional qualification requirements, as well as those of legal education, may and must be imposed on persons who seek to become judges (even if such highest professional qualification requirements are not imposed on other representatives of the legal profession); the failure to impose such highest professional qualification requirements on applicants for positions of judges would result in the preconditions for the loss of effectiveness in the work of courts and for the deterioration of the quality of such work, as well as for a violation of rights, freedoms, and legitimate interests of persons and various values, which are consolidated, defended, and protected by the Constitution; in general, the said failure would result in the preconditions for situations where justice only formally administered by courts whose judges are persons without necessary qualification would not be

the justice that is consolidated in and protected and defended by the Constitution. Consequently, under the Constitution, the legislature has the powers to consolidate also such a requirement in laws whereby applicants for positions of judges are required to have acquired university higher education in law, which is related, in the western legal tradition, with the acquisition of the highest professional qualification of a lawyer.

[...]

... “higher education in law” is a constitutional notion; it is used in Paragraph 3 of Article 103 of the Constitution, in which the requirements for candidates for the post of the justices of the Constitutional Court are described. The Constitution does not contain any explicit provisions defining requirements for judges of the courts specified in Paragraphs 1 and 2 of Article 111 of the Constitution (save the provision of Paragraph 1 of Article 112 of the Constitution, whereby, in Lithuania, only citizens of the Republic of Lithuania may be judges). If such a legal regulation established in the Constitution is interpreted in the context of other provisions of the Constitution, *inter alia*, the constitutional principles of a state under the rule of law, justice, the independence of judges and courts, and the constitutional right of a person to apply to a court, it should be held that the requirement of higher education in law for judges, thus, also for applicants for positions of judges, stems from the Constitution; the said requirement applies to all said applicants, no matter the judges of which court these persons would aspire to become.

The requirement of higher education in law for applicants for positions of judges and the fact that laws may impose the requirement of namely university higher education in law on such persons stem from the provisions of the official constitutional doctrine of the judiciary as the only state power that is formed on a professional basis and is exclusively entrusted with the administration of justice; various aspects of this doctrine are broadly revealed in the Constitutional Court’s rulings of 6 December 1995, 19 December 1996, 5 February 1999, 21 December 1999, and 12 July 2001, the conclusion of 31 March 2004, the rulings of 16 January 2006, 28 March 2006, 9 May 2006, and 6 June 2006, the decision of 8 August 2006, the rulings of 27 November 2006 and 22 October 2007, as well as in other acts of the Constitutional Court.

[...]

... under the Constitution, it is impermissible to establish any such a legal regulation whereby lower professional requirements would be raised for persons who wish to hold the position of a judge, *inter alia*, they would be required lower education and/or lower qualification than persons who intend to engage in other legal professions (advocate, prosecutor, notary, bailiff). Otherwise, this would lead to the preconditions for denying not only the exceptional constitutional status of judges, but also the constitutional concept of the administration of justice.

[...]

Taking account of the importance of the profession of a judge in a state under the rule of law (*inter alia*, taking account of the fact that, as mentioned before, when cases are decided (disputes are settled) in which parties to a case are, as a rule (and, in complex cases, virtually always), represented by professional lawyers, the last word always belongs to the court, and that the activity of judges draws guidelines to the entire legal profession and the legal practice in that country), it should be held that it is not enough that a person who wishes to hold the position of a judge completes only the basic studies provided for in legal acts of the Republic of Lithuania, i.e. the first-cycle studies in the field of law designated for the provision of only the theoretical grounds of the profession and the formation of necessary professional skills; the requirement (which arises from the Constitution) for high professional qualification of a judge implies that persons who wish to become judges are required to have acquired such university higher education in law that can only be ensured by two-cycle university sequential studies in the field of law (i.e. the qualification degrees of bachelor of law and master of law) or integrated studies in the field of law (both of which are provided for in legal acts of the Republic of Lithuania) where university first- and second-cycle studies are related by sequence.

On the other hand, although, as such, the first-cycle (undergraduate) studies in law cannot ensure the level of education sufficient for the work of a judge, these studies are necessary and may not be eliminated

from fully fledged university higher education in law necessary for persons who wish to become judges, since, as it has been mentioned before, namely the first-cycle studies in law are intended to provide the basis for the profession and to form professional skills necessary for independent work. A different interpretation, specifically that the first-cycle studies in law may be eliminated from fully fledged university higher education in law necessary for persons who wish to become judges, would not only deny the constitutional concept of the profession of a judge, but also the concept of master studies in the field of law and of the qualification degree of master of law, which is consolidated in legal acts (first of all, laws) of the Republic of Lithuania, since ... master studies and the qualification degree of master is related to the acquisition of higher professional qualification and preparation for independent research or artistic activities or activities for which deeper scientific knowledge and greater capacity are required, and only such a student of law can pursue “higher professional qualification” who has the theoretical bases of the legal profession and professional skills necessary for independent work, and that only such a student of law can pursue “deeper scientific knowledge and greater capacity” who has basic scientific knowledge and capacity necessary in the respective area of law. A different interpretation would deny the meaning of the first-cycle (undergraduate) studies in the field of law and that of single-cycle studies in the field of law; this would mean that persons with unequal legal education are allowed to compete for the position of a judge.

... the requirement that persons who wish to become judges have fully fledged university higher education in law (that they are subject to the requirement to have finished single-cycle (integrated) studies in the field of law where university first-cycle and second-cycle studies are related by sequence, or to have the qualification degrees of bachelor of law and master of law) applies to all persons who wish to hold the position of a judge, as well as to those who have completed the third cycle of studies in the field of law, doctoral studies, which are provided for in legal acts of the Republic of Lithuania, and have acquired the scientific degree of doctor.

It has been held in this ruling of the Constitutional Court that, taking account of the principles of legal certainty and legal security, which are consolidated in the Constitution, the fact that a person has completed university studies in the field of law leads to the presumption that such a person is eligible for a position for which university higher education in law is necessary (if he/she meets all the conditions that need not be limited only to the requirement of university higher education in law, but may also include the requirements for a certain work period as a lawyer, the practice performed, etc.); the same can be said as regards, *inter alia*, persons who wish to apply for the position of a judge. It should also be held that the programmes of university studies in the field of law of schools of higher education must be such that the theoretical preparation and practical abilities (acquired during the time of the studies) of persons who have completed these studies would raise no doubts, while the professional qualification acquired by them would allow them to aspire to positions (professions) in order to hold which (in order to engage in which) university higher education in law is needed.

Consequently, it is impermissible to establish any additional verification with regard to persons who wish to become judges and who have acquired fully fledged university higher education in law in order to ascertain whether such persons have really completed all requirements raised before fully fledged university higher education in law. Their diplomas of higher education testifying either single-cycle university education or the qualification degrees of bachelor of law and master of law should be regarded as sufficient proof that these persons have university higher education in law that is necessary in order to hold the position of a judge.

This does not deny the possibility for the legislature to establish the verification of the knowledge and abilities of applicants for the position of a judge (*inter alia*, by examining such applicants) where the said knowledge and abilities are necessary for the work of a judge.

Extending the powers of judges

The Constitutional Court's decision of 30 June 2010

Such a legal regulation that provides for the possibility of extending the powers of judges upon their expiry, save the exceptions allowed by the Constitution itself, is incompatible with the principle of the independence of judges and courts, which is consolidated in the Constitution, with Paragraph 2 of Article 109 of the Constitution, whereby, when administering justice, judges and courts are independent, with Paragraph 3 of this article, which prescribes that, while considering cases, judges obey only the law, and with the constitutional principle of a state under the rule of law (ruling of 9 May 2006).

The official constitutional doctrine related to the extension of the powers of judges was developed in the Constitutional Court's ruling of 22 October 2007, wherein the following is held: as long as the consideration of such cases where the extension of the powers of a judge is related to completing such consideration is not finished, the said judge is a fully fledged judge; while administering justice (deciding cases), he/she has the same powers as other judges of the same court, his/her status as a judge is indivisible, the same restrictions on activity and limitations on remuneration, which stem from the Constitution, are applied to him/her, he/she has the same responsibility and immunities as other judges; thus, he/she must have the same workload (*inter alia*, because of the fact that, in the said court, the position of a judge who must carry out an important constitutional function – to administer justice – is not yet vacant) as other judges of the same court, and he/she must be paid the same remuneration as other judges of the same court, he/she also has the same social (material) guarantees that the judges of the same court have.

[...]

... under the official constitutional doctrine formulated, *inter alia*, in the Constitutional Court's rulings of 9 May 2006 and 22 October 2007, the Constitution only allows the establishment, by means of a law, of an exceptional legal regulation governing the extension of the powers of judges. In this context, it needs to be noted that, as mentioned before, when being appointed, a judge must know the term of his/her powers (either until the time established under the law or until he/she reaches the pensionable age established under the law). Therefore, the work of a judge (*inter alia*, the assignment of cases for his/her consideration) must be organised in such a manner that, on the day of the expiry of the powers of a judge, he/she would have the possibility of having finished the consideration of cases assigned to him/her.

... the extension of the powers of judges is allowed only in exceptional cases, i.e. when, upon the expiry of the term of powers of a judge or upon reaching the pensionable age established by law, deciding certain cases – the administration of justice – would slow down and, thus, this may create the preconditions for injuring the rights and legitimate interests of persons and violating certain constitutional values if the powers of such a judge were not extended. For example, deciding cases would slow down if the powers of a judge were not extended, *inter alia*, in cases where, on the day of the expiry of powers, a judge is finishing the consideration of complicated cases wherein most procedural actions have been completed and some time is required for the completion of certain final actions, *inter alia*, adopting a final decision (drawing up and pronouncement thereof).

[...]

... a judge whose powers have been extended must, for a certain period of time (as long as the term of the extension of his/her powers has not expired), still receive the same workload as other judges of the same court, i.e. such a judge may also consider (as long as the term of the extension of his/her powers has not expired) such cases the consideration of which is started after his/her powers have been extended upon the expiry of the term of his/her powers or upon reaching the pensionable age established by law.

In view of the foregoing arguments, the conclusion should be drawn that ... a judge whose powers have been extended must receive the same workload as other judges of the same court and, during the period of the extension of powers, he/she may also administer justice as a fully fledged judge (*inter alia*, act as a judge, a judge rapporteur, and a member of a panel) in other cases that are assigned to him/her after his/her powers are extended.

[...]

... a judge must be released from duties when the legal fact to which the extension of his/her powers is related happens, i.e. when he/she finishes the consideration of cases the consideration of which was not finished at the time (on the day) when the term of powers of that judge expired or when he/she reached the

pensionable age established by law, where the powers of such a judge were extended for the purpose of completing the consideration of such cases. The powers of a judge must be discontinued in accordance with the established procedure as soon as the aforementioned legal fact happens – the consideration of cases to the consideration of which the term of the extension of the powers of a judge is related is finished. Consequently, such a judge must be released from duties and he/she may no longer consider any other cases (*inter alia*, including such cases that were assigned to him/her as a fully fledged judge during the period of the extension of his/her powers and the consideration of which is not finished on the day when the consideration of the cases to the consideration of which the term of the extension of his/her powers is related is finished).

In view of the foregoing arguments, the conclusion should be drawn that ... a judge whose powers have been extended may also administer justice as a fully fledged judge (*inter alia*, act as a judge, a judge rapporteur, and a member of a panel) in other cases (which are assigned to him/her after his/her powers are extended) but only until completing the consideration of certain cases the consideration of which was not finished at the time (on the day) when the powers of that judge were extended.

Professional and ethical requirements imposed on judges

The Constitutional Court's decision of 10 March 2014

The qualification of judges is one of the guarantees that judges will administer justice in a proper manner: only persons with high legal qualification and experience of life may be appointed as judges; this means that judges must meet special professional requirements (ruling of 21 December 1999 and the decision of 3 July 2013). The appropriate preparation of judges, the improvement of their knowledge and in-service training are an important precondition for guaranteeing the proper activities of courts (ruling of 21 December 1999).

Judges must meet very strict ethical and moral requirements; their reputation must be impeccable (ruling of 27 November 2006 and the decision of 3 July 2013); they must protect the honour and prestige of their profession (ruling of 21 December 1999). The Constitutional Court has also held that judges must bear great responsibility for how they administer justice, i.e. perform the obligation established for them in the Constitution (ruling of 21 December 1999 and the decision of 3 July 2013).

The assessment of the qualification and work of judges; the disciplinary responsibility of judges; releasing judges from duties when their conduct discredits the name of judges (Item 5 of Article 115 of the Constitution)

The Constitutional Court's decision of 10 March 2014

... a special institution of judges, which is specified in Paragraph 5 of Article 112 of the Constitution and takes part in the adoption of decisions on the career of judges (which advises the President of the Republic on the appointment, promotion, and transfer of judges or their release from office) and, as noted in the Constitutional Court's ruling of 9 May 2006, as a result of this, has the powers to assess the qualification of judges, must also assess, in certain aspects, the work of judges done in the consideration of cases – this is an important precondition for guaranteeing the proper activity of courts. However, it needs to be emphasised that the assessment of the work of judges done in the consideration of cases, where such assessment could create the preconditions for undermining the independence of judges and courts, would be incompatible with the Constitution, *inter alia*, Paragraph 2 of Article 109 thereof. The work of judges should be assessed in accordance with pre-established criteria while taking account, *inter alia*, of the circumstances such as the amount of work done in a court in question, the workload of a judge, the complexity and particularity of cases, and the duration and course of court proceedings.

In addition, it needs to be noted that, in view of the fact that, under the Constitution, the self-governing judiciary may not be too centralised and that the legislature has the broad discretion to establish, by means of a law, the system of the self-governance institutions of the judiciary, the powers to assess the work of judges done in the consideration of cases, as well as the qualification of judges, may also be conferred, by

means of a law, on a self-governance judicial institution other than that provided for in Paragraph 5 of Article 112 of the Constitution.

... judges must bear great responsibility for how they administer justice, i.e. perform the obligation established for them in the Constitution ... the system of the guarantees of the independence of judges and courts does not create any preconditions on the grounds of which a judge could evade the proper fulfilment of his/her duties and investigate cases in a negligent manner. Thus, the constitutional principle of the independence of judges and courts is far from meaning that disciplinary responsibility may not be imposed on a judge who performs his/her duties in an improper manner (*inter alia*, considers cases in a negligent manner) or evades performing them without a justifiable reason.

... the system of self-regulation and self-governance of the judiciary must ensure that judges perform their duties properly and that every unlawful or unethical conduct of a judge be properly assessed. However, as held in the Constitutional Court's ruling of 21 December 1999, the application of disciplinary measures to judges must be organised in such a manner that the actual independence of judges would not be violated.

It should be noted that this means, among other things, that, while applying disciplinary responsibility measures, the balance between the independence and responsibility of judges may not be violated; the said measures may not create any preconditions for interfering with the activities of judges undertaken in the consideration of cases and the adoption of decisions; nor may the said measures violate the actual procedural independence of judges. Disciplinary responsibility measures may be applied to judges for their certain conduct by which they commit misconduct while implementing their powers as a judge (for evading the performance of their duties or for their improper performance, *inter alia*, the negligent consideration of cases), as well as for the conduct of a judge that is not related to the implementation of the powers of a judge. Disciplinary responsibility measures that are applied to judges, the grounds and conditions for their application must be established by means of a law. When deciding whether certain behaviour of a judge is to be recognised as misconduct for which responsibility must be imposed, it is necessary to assess all circumstances related to its commitment.

Under Item 5 of Article 115 of the Constitution, judges are released from their duties according to the procedure established by law when their conduct discredits the name of judges. Thus, under the Constitution, release from duties is the strictest disciplinary responsibility measure applicable to a judge whose conduct discredits the name of judges.

The Constitutional Court has held that the Constitution does not *expressis verbis* establish what types of conduct of a judge are categorised as those discrediting the name of judges; the phrase "conduct discrediting the name of judges" is broad; it includes not only the conduct of a judge by which a judge, while implementing his/her powers as a judge, discredits the name of judges, but also the conduct that discredits the name of judges with no relation to the implementation of the powers of a judge; under the Constitution, the legislature, as well as self-governance judicial institutions, have the discretion to establish what types of conduct of a judge are categorised as those by which the name of judges is discredited; however, neither laws nor decisions of self-governance judicial institutions may establish any thorough (exhaustive) list of types of conduct by which a judge discredits the name of judges; every time the fact whether the conduct of a judge is that by which the name of judges is discredited must be decided after all circumstances related to the said conduct and significant for the case are assessed (rulings of 27 November 2006 and 16 January 2007).

The conduct provided for in Item 5 of Article 115 of the Constitution by which the name of judges is discredited implies not only the establishment (statement) of the relevant facts of objective nature, but also their assessment (ruling of 27 November 2006). Thus, in cases where the President of the Republic applies to a special institution of judges, as provided for by law and specified in Paragraph 5 of Article 112 of the Constitution, so that it would give advice, *inter alia*, on releasing from duties a judge whose conduct has discredited the name of judges, the said institution of judges must not only make sure that a judge has engaged in certain conduct (act), but also assess whether this conduct (act) really discredited the name of judges (rulings of 9 May 2006 and 27 November 2006).

[...]

... the procedural independence and autonomy of judges in deciding all issues related to a case under consideration is a necessary condition for the impartial and fair consideration of the case; only a court itself decides on how it should consider a case; a judge is not bound by the obligation to account for cases considered by him/her to any state institution or officials; while administering justice, no judge is or may be subordinate to any other judge or to the president of any court (*inter alia*, of the court where he/she works, as well as of a court of a higher level or instance); decisions adopted by a judge may be reviewed and altered or rescinded only by a court of higher instance in accordance with the procedure provided for in procedural laws; the purpose of the instance system of courts is to remove any errors of fact (i.e. of the establishment and assessment of legally significant facts) or those of law (i.e. of the application of law) made by courts of lower instance, and not to permit the administration of injustice; justice is administered by always leaving the possibility of correcting any possible error.

Thus, while fulfilling his/her constitutional obligation to administer justice and adopt reasoned and substantiated decisions, a judge considers cases independently and decides all issues related to a case under consideration at his/her own discretion, by following law, relying on a comprehensive and objective assessment of facts, his/her knowledge, inner conviction, and ethical requirements. A judge is not bound by the obligation to account for the consideration of cases and the validity of the adopted decisions; the arguments and reasoning of a judge are set out in the adopted decisions.

... it should be emphasised that the mere fact that a court of higher instance, having reviewed, in accordance with the procedure prescribed in procedural laws, a decision adopted by a court of lower instance, altered it or rescinded it due to errors in the interpretation and/or application of law and breaches of procedural laws that were made while adopting it, may not serve as a basis for imposing disciplinary responsibility on the judge who adopted that decision. Judges of courts of higher instance who consider cases concerning decisions adopted by courts of lower instance also rely on their knowledge and inner conviction; therefore, the adoption of another decision may also be determined by different perception, a different assessment of facts, and/or a different interpretation of law. The fact that errors in the interpretation and/or application of law and breaches of procedural laws that were made, while adopting a decision, by a judge of a court of lower instance who considered a case in an independent and impartial manner are corrected by a court of higher instance, first of all, shows that the instance system of courts functions according to its intended purpose; however, this does not show that a judge who adopted a decision that has been altered or rescinded performed his/her duties in a negligent manner or lacked necessary professional qualification. When a court of higher instance reviews and alters or rescinds a decision adopted by a court of lower instance, the qualification or activities (work) of a judge (performed in the consideration of cases) who has adopted it is not assessed; (a) self-governance judicial institution(s), which has (have) the respective powers, assesses (assess) this and applies (apply) disciplinary responsibility measures in accordance with the procedure prescribed by means of laws.

Thus, a decision adopted by a judge, even if altered or rescinded by a court of higher instance due to errors in the interpretation and/or application of law and breaches of procedural laws that were made while adopting it, may not serve as a basis for initiating the procedure for disciplinary responsibility, for recognising that the conduct of a judge discredited the name of judges and, under Item 5 of Article 115 of the Constitution, for releasing him/her from duties. The possibility of applying certain measures with negative effects to judges for specific decisions adopted by them (for the assessment of facts and the interpretation of law in those decisions) would deny the essence of the instance system of courts and would create the preconditions for undermining the procedural autonomy of judges in deciding all issues related to a particular case under consideration, as well as for interfering with actions of a judge or a court in administering justice; thus, it would violate the constitutional principle of the independence of judges and courts.

It has been mentioned that the system of self-regulation and self-governance of the judiciary must ensure that judges perform their duties properly and that every unlawful or unethical conduct of a judge be properly assessed; however, the application of disciplinary measures to judges must be organised in such a manner that the actual independence of judges would not be undermined.

... it should be noted that the constitutional principle of the independence of judges and courts does not deny the possibility of imposing disciplinary responsibility on a judge for evading the performance of his/her duties without a justifiable reason and for inappropriate performance of the assigned duties (*inter alia*, for negligence in considering cases). (A) self-governance judicial institution(s), which has (have) the powers to assess the activities of judges (i.e. how a judge, while administering justice, performs his/her duties), to examine misconduct committed by judges, and to impose disciplinary sanctions on them, must, on a case-by-case basis, assess all circumstances related to the performance of the duties of a judge. If a judge, when considering cases, performs his/her duties in a negligent manner (*inter alia*, considers cases in haste and superficially or, on the contrary, unjustifiably slowly, commits evident breaches of the requirements provided for in procedural laws and does not go into the substance of the material of a case, and considers cases in a slipshod manner), disciplinary responsibility should be imposed on him/her for the misconduct committed.

However, it needs to be emphasised that (a) self-governance judicial institution(s), which has (have) the powers to assess the activities of judges and apply disciplinary responsibility measures, may not decide to apply such measures for errors in the interpretation and/or application of law and breaches of procedural laws that are made by a judge while adopting a decision and are detected, as well as corrected, later by a court of higher instance, also where such breaches are detected by means of the review of an adopted decision not by a court of higher instance, but where such breaches are established during the administration of courts or during the assessment of the activities of judges by the aforementioned institution(s). If (a) self-governance judicial institution(s) were given such powers, i.e. the possibility of imposing disciplinary responsibility on judges for a specific adopted decision were provided for, this would mean that this (these) institution(s) is (are) assigned to carry out control over the decisions of judges and assess their content; thus, the essence of the instance system of courts would be denied, the preconditions for interfering with the activities of a judge in administering justice would be created, and the constitutional principle of the independence of judges and courts would be violated.

... it should also be noted that if decisions of a judge of a court of lower instance are altered or rescinded by courts of higher instance very often, gross and evident errors in the interpretation and/or application of law, as well as gross and evident breaches of procedural laws, are repeatedly made therein, this may mean that, while administering justice, a judge performs his/her duties in an improper manner (*inter alia*, considers cases in a negligent manner, does not go into the substance of the material of a case) and/or that a judge does not meet the requirements of professional qualification established for him/her. The improper and negligent conduct of a judge that reveals evident lack of competence and results in the continual adoption of such decisions in which errors in the interpretation and/or application of law, as well as breaches of procedural laws, are made is incompatible with the requirements established for a judge; therefore, the said conduct serves as a basis for applying disciplinary responsibility measures to a judge, *inter alia*, for recognising that the conduct of a judge discredits the name of judges. It should also be noted that if recurrent gross and evident errors in the interpretation and/or application of law, as well as recurrent gross and evident breaches of procedural laws, are detected not after a court of higher instance reviews the decisions adopted by a judge, but during the administration of courts or during the assessment of the activities of a judge by (a) self-governance judicial institution(s), this also serves as a basis for assessing accordingly the conduct of a judge and applying disciplinary responsibility measures to him/her, *inter alia*, for recognising that a judge discredits the name of judges and, under Paragraph 5 of Article 115 of the Constitution, for releasing him/her from duties.

After all significant circumstances are assessed, every time it must be decided whether the conduct of a judge in making the detected errors and breaches is the one that discredits the name of judges. The constitutional principle of the independence of judges and courts implies that the system of self-regulation and self-governance of the judiciary must function in such a manner that the preconditions would be created for releasing a judge who discredits the name of judges from his/her duties.

In the light of the foregoing, the conclusion should be drawn that the provisions [the guarantees of the independence of judges and courts do not create any preconditions on the grounds of which judges could

evade the proper fulfilment of their duties and investigate cases in a negligent manner; judges must protect the honour and prestige of their profession; the system of judicial self-governance must ensure that judges perform their duties properly and that every unlawful or unethical behaviour of a judge is properly assessed] ... of the Constitutional Court's ruling of 21 December 1999, *inter alia*, mean that:

– the constitutional principle of the independence of judges and courts does not deny the possibility of imposing disciplinary responsibility on judges for evading the performance of their duties without a justifiable reason and for the inappropriate performance of duties (*inter alia*, for the negligent consideration of cases); however, the mere fact that a court of higher instance, having reviewed, under the procedure provided for in procedural laws, a decision adopted by a judge, altered it or rescinded it due to errors in the interpretation and/or application of law or breaches of procedural laws that were made while adopting it, does not mean that this may serve as a basis for imposing disciplinary responsibility on the judge and, under Item 5 of Article 115 of the Constitution, for releasing him/her from duties upon recognising that his/her conduct has discredited the name of judges;

– recurrent gross and evident errors in the interpretation and/or application of law, as well as recurrent gross and evident breaches of procedural laws that were made by a judge while adopting decisions, serve as a basis for (a) self-governance judicial institution(s), which has (have) the respective powers, to assess the conduct of a judge as the inappropriate performance of duties (*inter alia*, the negligent consideration of cases) and as a lack of necessary professional qualification, to impose disciplinary responsibility on the judge, and to recognise that his/her conduct discredits the name of judges; the system of self-regulation and self-governance of the judiciary must function in such a manner that would create the preconditions for dismissing from duties a judge whose conduct discredits the name of judges.

9.1.5. The powers of courts related to the administration of justice

The duty of a court, if it has doubts, to apply to the Constitutional Court concerning the constitutionality of a legal act applicable in a case considered by that court (Article 110 of the Constitution)

The Constitutional Court's ruling of 30 December 2003

... Article 110 of the Constitution consolidates the prohibition on applying a law that is in conflict with the Constitution and establishes the constitutional duty of a court investigating a case, if it faces doubts about whether a law or another legal act that must be applied in a concrete case is in conflict with the Constitution, to suspend the consideration of the case and apply to the Constitutional Court, requesting it to decide whether the law or another legal act in question is in compliance with the Constitution. Such a constitutional regulation seeks to ensure that a legal act (part thereof) that is in conflict with the Constitution would not be applied, that no anticonstitutional legal consequences of the application of such a legal act (part thereof) would arise, that the rights of a person would not be violated, and that a person in respect of whom a legal act inconsistent with the Constitution or a law is applied would not unreasonably acquire, due to this, any rights or a legal status that does not belong to him/her.

The duty of courts to ensure that legal acts that are in conflict with higher-ranking legal acts would not be applied (Article 110 of the Constitution)

The Constitutional Court's ruling of 28 March 2006

... one of essential elements of the principle of a state under the rule of law, which is consolidated in the Constitution, is the principle whereby a legal act that is in conflict with a higher-ranking legal act must not be applied.

Paragraph 1 of Article 110 of the Constitution prescribes that judges may not apply any laws that are in conflict with the Constitution; Paragraph 2 of the same article stipulates that, in cases when there are grounds to believe that a law or another legal act that should be applied in a concrete case is in conflict with the Constitution, the judge suspends the consideration of the case and applies to the Constitutional Court, requesting that it decide whether the law or another legal act in question is in compliance with the

Constitution. If a court, after it has faced doubts about the compliance of a legal act applicable in a case with the Constitution, did not suspend the consideration of the case and did not apply to the Constitutional Court so that those doubts would be removed, and if the legal act whose compliance with the Constitution is doubtful were applied in the case, such a court would take the risk of adopting a decision that would not be a just one (ruling of 16 January 2006).

It needs to be emphasised that, under the Constitution, the Constitutional Court decides on the compliance of not all legal acts (parts thereof) with the Constitution (other higher-ranking legal acts), but ... only whether legal acts (part thereof) passed by the Seimas, the President of the Republic, or the Government or adopted by referendum are in conflict with a higher-ranking legal act, *inter alia* (and, first of all), with the Constitution.

On the other hand, as the Constitutional Court held in its decision of 20 September 2005, under the Constitution, such legal situations are impermissible where it would not be possible to verify in a court whether legal acts (parts thereof), *inter alia*, legal acts passed by ministers, other lower-ranking legal acts, as well as legal acts issued by municipalities, the review of which in terms of their compliance with the Constitution does not fall within the jurisdiction of the Constitutional Court, are in conflict with the Constitution and laws.

When executing this constitutional imperative, under the Constitution, the legislature has the duty to establish, by means of a law, in which courts (of general jurisdiction or specialised ones, established under Paragraph 2 of Article 111 of the Constitution) and under which procedure it is necessary to investigate and decide whether such legal acts (parts thereof) (*inter alia*, legal acts passed by ministers, other substatutory lower-ranking legal acts, as well as legal acts passed by municipal institutions) the review of which in terms of their compliance with the Constitution is not assigned to the jurisdiction of the Constitutional Court under the Constitution are in conflict with the Constitution and laws.

However, if the legislature has not carried out this constitutional duty for certain reasons (though the Constitution does not tolerate this), still, courts, under Paragraph 1 of Article 110 of the Constitution, may not apply any such legal acts that are in conflict with the Constitution. Thus, in cases of failure to establish, by means of a law, any such a legal regulation under which it would be clearly established, following, *inter alia*, the principle of *expressio unius est exclusio alterius*, in which courts and under which procedure it is necessary to investigate and decide whether the said legal acts (parts thereof) are in conflict with higher-ranking legal acts, *inter alia* (and, first of all), with the Constitution, it should be held that: first, under the Constitution (Article 110), any court, as mentioned before, which may not apply a legal act whose compliance with the Constitution (another higher-ranking legal act) it doubts, although it may not apply to the Constitutional Court concerning the compliance of such a legal act with the Constitution, because the review of such a legal act in terms of its compliance with the Constitution (another higher-ranking legal act) is not assigned to the jurisdiction of the Constitutional Court under the Constitution, has the powers arising directly from the Constitution to declare ad hoc a particular legal act in conflict with the Constitution (another higher-ranking legal act) and not to apply it; second, such ad hoc declaration of the legal act in conflict with the Constitution (another higher-ranking legal act) is the constitutional control of *inter partes* model, which is established by the Constitution only under the said exceptional circumstances, i.e. if the legislature, for certain reasons, has not carried out this constitutional duty to establish, by means of a law, in which courts and under which procedure it is necessary to investigate and decide whether such legal acts (parts thereof) the review of which in terms of their compliance with the Constitution is not assigned to the jurisdiction of the Constitutional Court under the Constitution are in conflict with higher-ranking legal acts, *inter alia*, with the Constitution.

[...]

It should be held that, at present, such a legal regulation is established [by means of] laws whereby a decision on the compliance of legal acts passed by other law-making subjects (thus, not those passed by the Seimas, the President of the Republic, or the Government and not those adopted by referendum) with higher-ranking legal acts, *inter alia* (and, first of all), with the Constitution, is assigned to the jurisdiction of administrative courts. If an administrative court rules such a legal act to be in conflict with the

Constitution (another higher-ranking legal act), then, under the Constitution and laws, such a decision of the said court has *erga omnes* impact on the whole practice of the application of the respective legal acts (parts thereof).

[...]

... an investigation into whether legal acts (parts thereof) passed by other law-making subjects (thus, which were not passed by the Seimas, the President of the Republic, or the Government or were not adopted by referendum) are in conflict with higher-ranking legal acts, *inter alia* (and, first of all), with the Constitution, and the adoption of the respective decisions imply the necessity for an administrative court that decides a case to ascertain whether those higher-ranking legal acts (parts thereof) themselves are in conflict with legal acts of an even higher level, *inter alia* (and, first of all), with the Constitution, and, if there are doubts, to take measures provided for in the Constitution and laws in order to remove the said doubts, certainly, without interfering with the powers assigned to the Constitutional Court. If this were not done, there would be the risk of adopting such a decision that would not be a just one, i.e. there would be the risk of applying a certain legal act (part thereof) based on such a higher-ranking legal act that would be declared in conflict with a legal act of an even higher level, or even with the Constitution itself, if a proper investigation were carried out, or there would be the risk of not applying a certain legal act (part thereof) declared in conflict with a higher-ranking legal act by the administrative court, even though that higher-ranking legal act would be declared in conflict with a legal act of an even higher level, or even with the Constitution itself, if a proper investigation were carried out. If this happened, the preconditions would be created for violating the values (*inter alia*, the constitutional rights of a person) that are consolidated, protected, and defended by the Constitution.

In this respect, an investigation into the compliance of legal acts (parts thereof) passed by other law-making subjects (thus, which were not passed by the Seimas, the President of the Republic, or the Government or were not adopted by referendum), with higher-ranking legal acts, except the Constitution itself, where such an investigation is assigned to the jurisdiction of administrative courts [by means of laws], implies the initiation of the respective constitutional justice case at the Constitutional Court, thus, also the duty of administrative courts to apply in such cases to the Constitutional Court with the respective petition if an administrative court has doubts about the compliance of a higher-ranking legal act (part thereof) passed by the Seimas, the President of the Republic, or the Government or that adopted by referendum with a legal act of an even higher level, *inter alia* (and, first of all), with the Constitution.

[...]

Interpreting Paragraph 2 of Article 6 and Paragraph 1 of Article 30 of the Constitution in the context of Paragraph 1 of Article 109 and Article 110 of the Constitution, as well as in the context of the constitutional principle of a state under the rule of law, it needs to be noted that the right of each person to defend his/her rights on the basis of the Constitution and the right of a person whose constitutional rights or freedoms are violated to apply to a court also imply that each party to a case considered by a court, when such a party has doubts over the compliance of a law or another legal act (part thereof) with the Constitution (with another higher-ranking legal act), where such a law or another legal act (part thereof) may be applied in that case and where an investigation into the compliance of which with the Constitution (with another higher-ranking legal act) falls under the jurisdiction of the Constitutional Court (i.e. when such a party doubts the compliance of a certain act (part thereof) of the Seimas, the President of the Republic, or the Government or an act (part thereof) adopted by referendum with the Constitution (with another higher-ranking legal act)), has the right to apply to a court of general jurisdiction or specialised court (established under Paragraph 2 of Article 111 of the Constitution) that considers the respective case, requesting such a court to suspend the consideration of the case and to apply to the Constitutional Court with the petition to investigate and to decide whether the legal act (part thereof) that was passed by the Seimas, the President of the Republic, or the Government or adopted by referendum and is applicable in the same case is in conflict with a higher-ranking legal act, *inter alia* (and, first of all), with the Constitution.

This is also *mutatis mutandis* applicable to those legal situations where a party to a case considered by a court has doubts over the compliance of a legal act (part thereof) with the Constitution (with another

higher-ranking legal act) where such a legal act (part thereof) may be applied in that case and where an investigation into the compliance of which with the Constitution (with another higher-ranking legal act) does not fall under the jurisdiction of the Constitutional Court (i.e. the said act has not been passed by the Seimas, by the President of the Republic, or by the Government and it has not been adopted by referendum) – the said party, under the Constitution ... has the right to apply to the respective administrative court regarding the compliance of such a legal act (part thereof) with the Constitution (with another higher-ranking legal act).

The particularities of application by courts to the Constitutional Court

The Constitutional Court's ruling of 28 March 2006

... application by courts (those of general jurisdiction and specialised ones) to the Constitutional Court, compared with application to the Constitutional Court by other subjects specified in Article 106 of the Constitution, with a petition requesting an investigation into and a decision on whether a legal act (part thereof) passed by the Seimas, the President of the Republic, or the Government or that adopted by referendum is in conflict with a higher-ranking legal act, *inter alia* (and, first of all), with the Constitution, shows that application by courts is also special, because courts, having doubted about the compliance of a legal act (part thereof) passed by the Seimas, the President of the Republic, or the Government or that adopted by referendum with a higher-ranking legal act, *inter alia* (and, first of all), with the Constitution, not only may, but also must, apply to the Constitutional Court.

In this context, it should be noted that, under the Constitution, a court of general jurisdiction or a specialised court (established under Paragraph 2 of Article 111 of the Constitution) may apply to the Constitutional Court with a petition requesting an investigation into and a decision on whether not any constitutional law (part thereof) is in conflict with the Constitution, but only such a constitutional law that must be applied in the respective case considered by that court, also whether not any law (part thereof) (as well as the Statute of the Seimas (part thereof)) is in conflict with the Constitution and constitutional laws, but only the one that must be applied in the respective case considered by that court, also whether not any substatutory legal act (part thereof) of the Seimas is in conflict with the Constitution, constitutional laws, laws, as well as with the Statute of the Seimas, but only the one that must be applied in the respective case considered by that court, also whether not any act (part thereof) of the President of the Republic is in conflict with the Constitution, constitutional laws, and laws, but only the one that must be applied in the respective case considered by that court, as well as whether not any act (part thereof) of the Government is in conflict with the Constitution, constitutional laws, and laws, but only the one that must be applied in the respective case considered by that court.

Such a requirement is also applicable to the court decisions to apply to the respective administrative court with a petition requesting an investigation into and a decision on whether a legal act (part thereof) that is applicable in a case and whose verification in terms of its compliance with higher-ranking legal acts (*inter alia* (and, first of all), with the Constitution) is assigned to the jurisdiction of administrative courts is in conflict with the Constitution (another higher-ranking legal act).

It should be noted that the Constitution does not tolerate any such situations where a certain court that, in a case considered by it, must apply a legal act (part thereof) concerning whose compliance with a higher-ranking legal act, *inter alia* (and, first of all), with the Constitution, another petitioner (for example, another court) has already applied to the Constitutional Court neither (if it doubts the compliance of the said legal act (part thereof) with a higher-ranking legal act, *inter alia* (and, first of all), with the Constitution) suspends the consideration of the respective case and applies to the Constitutional Court in order that these doubts would be removed nor (if it does not doubt the compliance of the said legal act (part thereof) with a higher-ranking legal act, *inter alia* (and, first of all), with the Constitution) applies this legal act (part thereof), but once it has the information that another petitioner (for example, another court) has already applied to the Constitutional Court concerning the compliance of that legal act (part thereof) with a higher-ranking legal act, *inter alia* (and, first of all), with the Constitution, suspends the consideration of the case

and does not decide the case on the merits until the Constitutional Court completes the consideration of the respective case following the petition of the said another petitioner.

The powers of courts to fill legal gaps ad hoc

The Constitutional Court's decision of 8 August 2006

The removal of legal gaps (without excluding a legislative omission) is a matter of the competence of the respective (competent) law-making subject. However, it is also possible, to a certain extent, to fill legal gaps that are in lower-ranking legal acts in the course of the application of law (*inter alia*, by making use of legal analogy, by applying general legal principles, as well as higher-ranking legal acts, first of all, the Constitution), thus, also in the course of the interpretation of law (*inter alia*, when this is done by courts of general jurisdiction and specialised courts (established under Paragraph 2 of Article 111 of the Constitution), which administer justice and decide, within their competence, individual cases and must interpret law so that they would be able to apply it). At the same time, it needs to be emphasised that a court can fill a legal gap that is in a lower-ranking legal act only ad hoc, i.e. by this way of the application of law, a legal gap is removed only as regards the particular social relationship due to which a concrete dispute is decided in the respective case investigated by that court. On the other hand, the judicial (ad hoc) removal of legal gaps creates the preconditions for developing the uniform case law in deciding cases of a certain category – the law consolidated in judicial precedents; the law consolidated in judicial precedents can be changed or modified later by the legislature (or another competent law-making subject), when it regulates certain social relationships by means of a law (or another legal act), thus removing a particular legal gap already not ad hoc, but by the prospective legal regulation of a general nature.

Thus, it is possible to completely remove legal gaps (as well as legislative omissions) only when the law-making institutions issue the respective legal acts. Courts cannot do this. They can fill the legal gaps that are in lower-ranking legal acts only ad hoc, since courts administer justice, but they are not legislative institutions (in the positive and broadest sense of this term); such a limitation on the possibilities of courts in this area is especially evident when gaps in substantive law are confronted. However, in all cases there is an undeniable possibility for courts to fill ad hoc a legal gap that is in a lower-ranking legal act. If such powers of courts were denied or not recognised, if the possibilities of courts to apply law, first of all, supreme law – the Constitution – depended on whether a certain law-making subject did not leave gaps in the legal regulation (legal acts) adopted by it, and if courts were able to decide cases only after these legal gaps are filled by way of lawmaking, then it would have to be stated that courts, when they decide cases, apply not law, not, first of all, supreme law – the Constitution – but only a law (in the general sense of this term), that they administer justice not according to law, but only formally apply articles (parts thereof) of legal acts, that constitutional values, *inter alia*, the rights and freedoms of a person, may be injured (and may be neither compensated nor redressed) only because the respective law-making subject has not legally regulated certain relationships (or has legally regulated them, but not intensively enough), i.e. that although certain values are consolidated in the Constitution, they, under the Constitution, are not properly defended and protected. This would not be in line with the social and constitutional mission of courts. Besides, this would mean that law is treated only as its textual form and is identified with its textual form.

[...]

It has been held in this decision of the Constitutional Court that legal gaps (including legislative omissions) that are in lower-ranking legal acts may be filled ad hoc when courts, within their competence, decide cases concerning an individual social relationship and when they apply (and interpret) law. Therefore, in cases where, instead of the legal regulation that was declared by the Constitutional Court in conflict with a higher-ranking legal act, *inter alia*, with the Constitution, the respective law-making subject has not passed a legal act (acts) (parts thereof) that would establish a new (different) legal regulation harmonised with the said higher-ranking legal acts, *inter alia*, with the Constitution, courts have the constitutional duty to ensure the rights and freedoms of a person who applies to a court regarding the violation of his/her rights or freedoms and they must ensure other constitutional values; thus, courts have the powers, which stem from the Constitution, to apply, *inter alia*, the general principles of law, as well as

higher-ranking legal acts, and, first of all, the Constitution – supreme law; otherwise, it would have to be held that the Constitution itself prohibits courts from administering justice, but this would absolutely be unjustifiable from the constitutional standpoint. In the course of the application of law, also in cases where, instead of a legal regulation ruled by the Constitutional Court to be in conflict with a higher-ranking legal act, *inter alia*, the Constitution, the respective law-making subject has not passed a legal act (acts) (parts thereof) that would establish a new (different) legal regulation harmonised with the said higher-ranking legal acts, *inter alia*, the Constitution, courts must follow *inter alia*, the constitutional concept of human rights and freedoms, the maxim recognising the innate nature of human rights and freedoms consolidated in the Constitution, the constitutional principles of a state under the rule of law, justice, legal certainty and legal security, proportionality, the due process of law, and of the equality of the rights of persons, as well as the constitutional principle of legitimate expectations (which, as held in the Constitutional Court's ruling of 13 December 2004, implies that, in certain exceptional cases, it is also necessary to protect such acquired rights of a person arising from legal acts ruled later in conflict with the Constitution (or in conflict with the Constitution and/or laws where the said legal acts are substatory) that, if not defended or protected, would result in greater harm to the person, other persons, society, or the state than harm inflicted in cases of the [total] or partial defence or protection of the said rights). If, in cases where, instead of a legal regulation ruled by the Constitutional Court to be in conflict with a higher-ranking legal act, *inter alia*, the Constitution, the respective law-making subject has not passed a legal act (acts) (parts thereof) that would establish a new (different) legal regulation harmonised with the said higher-ranking legal acts, *inter alia*, the Constitution, courts evaded for certain reasons implementing their constitutional powers to apply, *inter alia*, the general principles of law, as well as higher-ranking legal acts, first of all, the Constitution – supreme law – and, thus, evaded ensuring human rights and freedoms, it would have to be held that courts do not carry out their constitutional purpose of the administration of justice, that they ignore the constitutional principles of a state under the rule of law and justice, the general legal principle of *ubi ius, ibi remedium*, the provision of Paragraph 1 of Article 6 of the Constitution, whereby the Constitution is an integral and directly applicable act, also that a person might sustain damage and remain unprotected, his/her rights and freedoms, as well as legitimate interests and legitimate expectations, might be non-secured only because a certain law-making subject, i.e. a state institution, has not performed its constitutional duty – where, instead of a legal regulation ruled by the Constitutional Court to be in conflict with a higher-ranking legal act, *inter alia*, the Constitution, the respective law-making subject has not passed a legal act (acts) (parts thereof) that would establish a new (different) legal regulation harmonised with the said higher-ranking legal acts, *inter alia*, the Constitution. This would not only shatter the trust of that person in the state and law in substance, but also, if such practice became widespread, might create the preconditions for the thriving of such arbitrariness of state power where it does not act in the way it is obliged to act, as well as for legal nihilism and, in the long run, for distrust by an increasingly greater part of society or even entire society in the state and its law.

However, it needs to be emphasised once again that, when courts exercise these constitutional powers, legal gaps are not removed for good – they are only filled ad hoc; still, this allows ensuring the protection of the rights and freedoms of a person who applies to a court regarding the defence of his/her violated rights precisely in that individual social relationship due to which the respective case is considered in a court of general jurisdiction or in a specialised court, established under Paragraph 2 of Article 111 of the Constitution. This should also motivate a competent law-making subject to remove, more speedily and in a proper manner, an existing legal gap, i.e. to establish a missing legal regulation instead of the one ruled to be in conflict with the Constitution.

The right of a judge to become familiar with a state secret or other classified information (Articles 109 and 117 of the Constitution) (on the protection of a state secret (other classified information) in court proceedings, see 9.1.6. Court proceedings and court decisions, the ruling of 15 May 2007)

The Constitutional Court's ruling of 15 May 2007

Paragraph 1 of Article 109 of the Constitution, whereby, in the Republic of Lithuania, justice is administered only by courts, gives rise to the duty of courts to consider cases justly and objectively, as well as to adopt reasoned and substantiated decisions; therefore, there may not be any such a legal situation where a court would not be able to have access to such case material that contains information constituting a state secret (or other classified information). In its ruling of 19 December 1996, the Constitutional Court held that “the right of a judge who investigates a case to have access to information that is considered a state secret is based on Article 109 of the Constitution ... as well as on Article 117 of the Constitution” and that “the right of a judge to have access to information that is considered a state secret and is necessary for the investigation of a case is determined by the function of a court as a state institution to administer justice, but not by entering the position of a judge on the list of certain positions”.

The continuity of the jurisprudence of courts (court precedents)

The Constitutional Court's ruling of 24 October 2007

The constitutional principle of a state under the rule of law implies the continuity of jurisprudence. The instance system of courts of general jurisdiction, which is consolidated in the Constitution, must function in such a way that would create the preconditions for developing the uniform (coherent, consistent) case law of courts of general jurisdiction, i.e. such that would be based on the principles of a state under the rule of law, justice, and the equality of all persons before the law (and other constitutional principles), which are enshrined in the Constitution, as well as on the maxim (inseparably linked with the said principles and arising from them) that the same (analogous) cases must be decided in the same way, i.e. they must be decided not by creating new court precedents, competing with the existing ones, but by taking account of the already consolidated ones. When ensuring the uniformity (coherence, consistency) (which arises from the Constitution) of the case law of courts of general jurisdiction and, thus, the continuity of jurisprudence, the following factors (along with other important factors) are also of crucial importance: courts of general jurisdiction, when adopting decisions in cases of certain categories, are bound by their own precedents – decisions in analogous cases; courts of general jurisdiction of lower instance, when adopting decisions in cases of certain categories, are bound by decisions of courts of general jurisdiction of higher instance – precedents in cases of the same categories; courts of general jurisdiction of higher instance, while reviewing decisions of courts of general jurisdiction of lower instance, must assess these decisions by always following the same legal criteria; these criteria must be clear and known *ex ante* to subjects of law, *inter alia*, to courts of general jurisdiction of lower instance (thus, the jurisprudence of courts of general jurisdiction must be predictable). The already existing precedents in cases of certain categories that were created by courts of general jurisdiction of higher instance are not only binding on courts of general jurisdiction of lower instance that adopt decisions in analogous cases, but also on courts of general jurisdiction of higher instance that created those precedents (*inter alia*, the Court of Appeal of Lithuania and the Supreme Court of Lithuania). Courts must follow such a concept of the content of particular provisions (norms, principles) of law (including such a concept of the application of such provisions of law) that was formed and was followed when applying these provisions (norms, principles) in previous cases, *inter alia*, when previously deciding analogous cases. Disregarding the maxim that the same (analogous) cases must be decided in the same way, which arises from the Constitution, would also mean disregarding the provisions of the Constitution on the administration of justice, that of the constitutional principles of a state under the rule of law, justice, the equality of people before the court, and other constitutional principles. The case law of courts of general jurisdiction in cases of particular categories must be modified and new court precedents in cases of the same categories may be created only

when this is unavoidably and objectively necessary and when this is constitutionally reasoned and justified. Such modification of the case law of courts of general jurisdiction (deviation from previous precedents, which was binding on courts until then and the creation of new precedents) must in all cases be properly (clearly and rationally) argued in the respective decisions of courts of general jurisdiction. Neither creating new court precedents nor arguing (substantiating) court precedents may be such volitional acts that are not rationally and legally motivated. No creation or reasoning of a new court precedent may be determined by accidental (from the aspect of law) factors. It is such modification – only when this is unavoidably and objectively necessary, and when this is properly (clearly and rationally) argued in all cases – of the case law of courts of general jurisdiction (deviation from previous precedents that were binding on courts by then and the creation of new precedents) that must be respectively ensured by the Court of Appeal of Lithuania and the Supreme Court of Lithuania within their competence. If the said requirements arising from the Constitution are disregarded when court decisions are adopted, this would create the preconditions for the incompatibilities and incoherence both in the case law of courts of general jurisdiction and in the legal system, the jurisprudence of courts would become less predictable, and there would be grounds for doubts as to whether particular courts of general jurisdiction are impartial when adopting decisions, and whether such decisions are subjective in other aspects. The instance system of courts of general jurisdiction, which stems from the Constitution, may not be interpreted as restricting the procedural independence of courts of general jurisdiction of lower instance: even though ... under the Constitution, when adopting decisions in cases of certain categories, courts of general jurisdiction of lower instance are bound by decisions of courts of general jurisdiction of higher instance – precedents in cases of the said categories, courts of general jurisdiction of higher instance (and their judges) may not interfere in cases considered by courts of general jurisdiction of lower instance or give them any instructions, either obligatory or recommendatory, on how certain cases must be decided, etc.; from the aspect of the Constitution, such instructions (whether obligatory or recommendatory) given by certain courts (judges) would be regarded as acting *ultra vires*. Under the Constitution, case law is formed only when courts decide cases themselves. The imperatives (which stem from the Constitution and are discussed in this ruling of the Constitutional Court) of both the activity of courts of general jurisdiction and the legal regulation governing such activity are also *mutatis mutandis* applicable to the activity of specialised courts (established under Paragraph 2 of Article 111 of the Constitution) and the legal regulation governing their activity.

[...]

Thus, court precedents are sources of law – *auctoritate rationis*; the reference to the precedents is a condition for uniform (coherent, consistent) case law, as well as that of the implementation of the principle of justice, which is consolidated in the Constitution. Therefore, it is not permitted to unreasonably ignore court precedents. In order to perform this function properly, precedents themselves should be clear. Court precedents may not be in conflict with the official constitutional doctrine.

On the other hand, it is not permitted to overestimate, let alone make absolute, the significance of court precedents as sources of law. Court precedents must be invoked with particular care. It needs to be emphasised that, in the course of the consideration of cases by courts, only those previous decisions of courts have the power of precedent that were created in analogous cases, i.e. a precedent is applied only in those cases whose factual circumstances are identical or very similar to the factual circumstances of a case in which the respective precedent was created and with regard to which the same law should be applied as in the case in which such a precedent was created. In a situation where there is the competition of precedents (i.e. when there are several differing court decisions adopted in analogous cases), it is necessary to follow a precedent that was created by a court of higher instance (higher level). Also, account should be taken of the time of the creation of a precedent and of other significant factors as, for instance: the fact whether a certain precedent reflects the established court practice or whether it is a single occurrence; whether the reasoning of a decision is convincing; the composition of a court that adopted the respective decision (whether such a decision was adopted by a single judge, or by a panel of judges, or whether by the enlarged panel of judges, or whether by a court (its chamber) in its entire composition); whether there were any separate opinions of judges expressed; the possible significant (social, economic, etc.) changes that took

place after the adoption of the respective court decision that has the significance of a precedent, etc. As mentioned before, in cases where the modification of case law is unavoidably and objectively necessary, courts may deviate from previous precedents that were binding on courts until then, and create new precedents; however, this must be done by properly (clearly and rationally) arguing it. It needs to be especially emphasised that, when deviating from its previous precedents, a court must not only properly argue an adopted decision (i.e. a created precedent) itself, but it also must clearly set out the reasoning and arguments substantiating the necessity to deviate from a previous precedent.

One of the necessary conditions for ensuring the uniformity (coherence, consistency) of case law and, thus, also the continuity of jurisprudence is the accessibility of precedents of courts of general jurisdiction of all levels and of all specialised courts, established under Paragraph 2 of Article 111 of the Constitution, where the said accessibility is determined by the creation of the respective information systems and ensuring the organisational and technical possibilities for courts (judges) to have access to decisions (precedents) previously adopted by courts in analogous cases.

The duty of a court, if it has doubts, to apply to the Constitutional Court concerning the constitutionality of a legal act applicable in a case considered by that court (Article 110 of the Constitution); application by a court to the Constitutional Court with a petition requesting the interpretation of a final act passed by the Constitutional Court

The Constitutional Court's decision of 22 April 2010

Paragraph 1 of Article 110 of the Constitution prescribes that judges may not apply any laws that are in conflict with the Constitution; Paragraph 2 of the same article stipulates that, in cases where there are grounds to believe that a law or another legal act that should be applied in a concrete case is in conflict with the Constitution, the judge suspends the consideration of the case and applies to the Constitutional Court, requesting that it decide whether the law or another legal act in question is in compliance with the Constitution. If a court, after it has faced doubts about the compliance of a legal act applicable in a case with the Constitution, did not suspend the consideration of the case and did not apply to the Constitutional Court so that those doubts would be removed, and if the legal act whose compliance with the Constitution is doubtful were applied in the case, such a court would take the risk of adopting such a decision that would not be a just one (rulings of 16 January 2006 and 28 March 2006).

Under the Constitution, the grounds for initiating a constitutional justice case at the Constitutional Court are doubts faced by a court (judge) that is considering a concrete case as to the conformity of a legal act applicable in that case with the Constitution (another higher-ranking legal act): such doubts must be removed so that the said court could adopt a just decision (another final court act) in that case. It is only the Constitutional Court that may remove such doubts (i.e. deny or confirm their reasonableness) within its competence (ruling of 24 October 2007).

In its ruling of 28 March 2006, the Constitutional Court held the following:

- if a petitioner – a court considering a case – applies to the Constitutional Court, requesting an investigation into and a decision on whether a legal act (part thereof) passed by the Seimas, the President of the Republic, or the Government or that adopted by referendum, where the said legal act is applicable in that case, is in conflict with a higher-ranking legal act, *inter alia* (and, first of all), with the Constitution, and, if the Constitutional Court does not decide this question on the merits, the doubts of the said court about whether the respective law or another legal act (part thereof) is in conflict with a higher-ranking legal act, *inter alia* (and, first of all), with the Constitution, will not be removed and, if it applies such a law or another legal act (part thereof), the values, *inter alia*, the constitutional rights of a person, which are consolidated, defended, and protected by the Constitution, could be violated;

- application by courts (those of general jurisdiction and specialised ones) to the Constitutional Court, compared with application to the Constitutional Court by other subjects specified in Article 106 of the Constitution, with a petition requesting an investigation into and a decision on whether a legal act (part thereof) passed by the Seimas, the President of the Republic, or the Government or that adopted by

referendum is in conflict with a higher-ranking legal act, *inter alia* (and, first of all), with the Constitution, shows that application by courts is also special because courts, having doubted about the compliance of a legal act (part thereof) passed by the Seimas, the President of the Republic, or the Government or that adopted by referendum with a higher-ranking legal act, *inter alia* (and, first of all), with the Constitution, not only may, but also must, apply to the Constitutional Court;

– under the Constitution, a court considering a certain case where such a court, under the Constitution, not only may, but also (if it has certain doubts) must, apply to the Constitutional Court with a petition requesting a decision on whether the respective legal act (part thereof) passed by the Seimas, the President of the Republic, or the Government or that adopted by referendum is in conflict with a higher-ranking legal act, *inter alia* (and, first of all), with the Constitution, also has the constitutionally justifiable interest to receive a particular answer from the Constitutional Court and that such an answer will be given; a different interpretation of the respective provisions of the Constitution could create the preconditions for a court considering a case to apply such a law or another legal act (part thereof) whose compliance with the Constitution (with another higher-ranking legal act), in the opinion of the said court, is doubtful.

In its acts, the Constitutional Court has held more than once that the purpose of the institution of the interpretation of rulings and other final acts of the Constitutional Court is to reveal the content and meaning of certain provisions of a ruling or another final act of the Constitutional Court more broadly and in more detail where this is necessary so that the proper execution of that ruling or another final act would be ensured and the said ruling or another final act of the Constitutional Court would be followed.

Thus, if a court considering a case applies to the Constitutional Court with a petition requesting the interpretation of certain provisions of a ruling or another final act of the Constitutional Court, and if the Constitutional Court does not interpret such provisions of its ruling or another final act and does not reveal the content and meaning thereof more broadly and in more detail where this is necessary in order to ensure the proper execution of that ruling or another final act of the Constitutional Court so that the said ruling or another final act of the Constitutional Court would be followed, the values, *inter alia*, the constitutional rights of a person consolidated, defended, and protected by the Constitution could be violated, which would mean that justice would not be administered.

[...]

... the right of the Constitutional Court, which is consolidated in ... the Law on the Constitutional Court, to officially interpret its ruling, *inter alia*, on its own initiative, means that the Constitutional Court interprets its rulings or other final acts, i.e. reveals the content and meaning of these acts more broadly and in more detail where this is necessary in order to ensure the proper execution of the respective ruling or another final act of the Constitutional Court and in order to ensure that the respective ruling or another final act of the Constitutional Court would be not formally, but properly followed and that justice consolidated, protected, and defended by the Constitution would be administered. The *ex officio* powers of the Constitutional Court to interpret its rulings or other final acts also mean that the Constitutional Court may interpret its rulings or other final acts where this is necessary so that acts adopted by the Constitutional Court would be followed properly while administering justice irrespective of the fact whether the respective petition of the subjects indicated in the Law on the Constitutional Court is present.

In view of the said circumstances, it needs to be held that, having established the constitutionally justifiable interest of the petitioner – a court considering a case – to remove doubts regarding the proper execution of rulings or other final acts (provisions thereof) of the Constitutional Court in order that justice would be properly administered in a case considered by that court, the Constitutional Court may accept requests to interpret certain provisions of a ruling or another final act of the Constitutional Court and investigate these requests in the manner prescribed by law, as well as pronounce a decision on such interpretation.

The powers of courts to interpret notions used in legal acts

The Constitutional Court's ruling of 18 April 2012

... the Constitutional Court has held that such questions of the application of law that have not been decided by the legislature may be decided by courts when they consider disputes regarding the application of the respective legal acts (parts thereof). Thus, when applying laws and other legal acts, courts must interpret notions employed therein in the course of deciding cases under their consideration.

The right of a court (judge) to have access to all case material and/or material significant for a case (*inter alia*, material constituting a state secret or other classified information) (Articles 109 and 117 of the Constitution)

The Constitutional Court's decision of 3 July 2013

... the purpose and constitutional competence of the judiciary is to administer justice; courts have the duty to consider cases in a fair and objective manner, as well as to adopt reasoned and substantiated decisions; the adoption of a just court decision constitutes a constitutional value; every final court act must be based on legal arguments (reasoning); the rights of a person must be defended not in a perfunctory manner, but in reality and effectively; the justice administered by a court in a perfunctory manner is not the justice that is consolidated, protected, and defended by the Constitution.

It needs to be noted that, in order for a court to properly fulfil its constitutional obligation to administer justice, *inter alia*, in reality and effectively, and not to defend the violated rights and freedoms of a person only in a perfunctory manner, under the Constitution, such a legal regulation must be established that could ensure the right of a court (judge) that considers a case to have access to all case material and/or material significant for the case.

Thus, under the Constitution, no such situation is allowed where, in the course of the fulfilment of its constitutional obligation to administer justice and, having the duty to consider a case justly and objectively, a court would be forced to adopt a decision without having any possibility of access to all case material and/or the material significant for the case, *inter alia*, material constituting a state secret or other classified information, irrespective of the fact whether the court has permission, which is issued under the [law], to work with or have access to classified information. If a court had to adopt a decision without a comprehensive assessment of all case material and/or material significant for the case, *inter alia*, material constituting a state secret or other classified information, the adopted decision could not be substantiated properly and the preconditions would be created for the adoption of an unjust decision. It would mean that, in the name of the Republic of Lithuania, the court implemented not the justice that is consolidated in the Constitution, but, according to the Constitution, no justice at all. In such a way, the constitutional concept of a court as an institution implementing justice in the name of the Republic of Lithuania would also be denied.

[...]

... the duty of the state to guarantee the protection of the secrecy of information constituting a state secret (or other classified information) and the possibility for a court to adopt a just decision may not be opposed.

... certain requirements are imposed on persons who are granted the right to have access to information that constitutes a state secret; such requirements are related to the reliability and loyalty of such persons to the State of Lithuania; the said requirements should be linked with the trust of the state in that person.

In this context, it needs to be noted that, as the Constitutional Court has held on more than one occasion, judges are subject to special professional requirements; a judge must feel greatly responsible for how he/she administers justice – performs the obligation established for him/her in the Constitution; only the persons with high legal qualification and having experience of life may be appointed as judges (ruling of 21 December 1999); judges must meet very strict ethical and moral requirements: their reputation must be impeccable (ruling of 27 November 2006).

Consequently, the fact that a person is appointed as a judge and is entrusted with the administration of justice in the name of the Republic of Lithuania shows the trust of the state in that person; thus, it is presumed that there is no ground for doubting his/her reliability and loyalty to the State of Lithuania.

In view of the foregoing arguments, the conclusion should be drawn that ... courts (judges) considering a case have the right in all cases to have access to case material and/or material significant for the case where such material constitutes a state secret (or other classified information), irrespective of whether they have permission, which is issued under [the law], to handle or have access to classified information.

The duty of a court to follow European Union law and apply it properly and, in the event of doubts regarding the interpretation or validity of the provisions of European Union law, to refer to the Court of Justice of the European Union for a preliminary ruling

The Constitutional Court's ruling of 14 December 2018

... the duty of a court, stemming from Paragraph 1 of Article 109 of the Constitution and the constitutional principle of justice, to adopt a fair decision, *inter alia*, implies the duty of a court to follow law and apply it properly when examining a case.

[...]

... under Paragraph 2 of the Constitutional Act of the Republic of Lithuania on Membership of the Republic of Lithuania in the European Union, which is a constituent part of the Constitution, the norms of European Union law are a constituent part of the legal system of the Republic of Lithuania; where it concerns the founding Treaties of the European Union, the norms of European Union law are applied directly, while in the event of the collision of legal norms, they have supremacy over the laws and other legal acts of the Republic of Lithuania. In view of this, it should be noted that the duty, stemming from Paragraph 1 of Article 109 of the Constitution and the constitutional principle of justice, for a court to follow law and apply it properly also includes the duty to follow European Union law and apply it properly.

The full participation of the Republic of Lithuania, as a Member State, in the European Union is a constitutional imperative based on the expression of the sovereign will of the Nation; full membership of the Republic of Lithuania in the European Union is a constitutional value (rulings of 24 January 2014 and 19 November 2015 and the decision of 16 May 2016); the constitutional imperative of full participation by the Republic of Lithuania in the European Union also implies the constitutional obligation of the Republic of Lithuania to properly implement the requirements of European Union law (decision of 20 December 2017).

Article 1 of the Constitutional Act on Membership of the Republic of Lithuania in the European Union, which is a constituent part of the Constitution, is relevant in this respect: "The Republic of Lithuania as a Member State of the European Union shall share with or confer on the European Union the competences of its state institutions in the areas provided for in the founding Treaties of the European Union and to the extent it would, together with the other Member States of the European Union, jointly meet its membership commitments in those areas, as well as enjoy membership rights."

[...]

... the Constitution, *inter alia*, Paragraph 1 of Article 109 thereof, the constitutional principle of justice, the constitutional imperative of full participation by the Republic of Lithuania in the European Union, as well as Articles 1 and 2 of the Constitutional Act on Membership of the Republic of Lithuania in the European Union, give rise to the duty of a court, in order to properly interpret the provisions of European Union law that are applicable in a case under its consideration, to refer to the Court of Justice of the European Union with a request for a preliminary ruling in the event of doubts regarding the interpretation or validity of the said provisions of European Union law.

The duty of a court to fairly resolve the issue of the distribution of costs between the parties

The Constitutional Court's ruling of 14 December 2018

... the duty of a court, stemming from Paragraph 1 of Article 109 of the Constitution and the constitutional principle of justice, to adopt a fair decision implies, *inter alia*, the duty to fairly resolve the issue of the distribution of costs between the parties.

It should be noted in this context that the prohibition, arising from Paragraph 1 of Article 109 of the Constitution and the constitutional principles of justice and a state under the rule of law, for the legislature to establish such a legal regulation that would deny the powers of a court to administer justice, *inter alia*, means that the legislature must not establish such a legal regulation that would preclude a court from resolving the issue of the distribution of costs between the parties in a fair manner by taking into account all circumstances of the case.

It should also be noted that the fair distribution of costs between the parties depends on the good faith of the parties, the reasonableness and necessity of the costs incurred by them, the extent to which their claims have been satisfied after the court has settled the case, and other significant circumstances, *inter alia*, where the cause of certain incurred costs is the fact that the court, in order to adopt a fair, reasoned, and well-grounded decision in the case, has fulfilled its constitutional duty to apply to the Constitutional Court or another court having jurisdiction over the compliance of the legal act applicable in the case with higher-ranking legislation, or its constitutional duty to refer to the Court of Justice of the European Union for a preliminary ruling. When deciding on the fair distribution of costs incurred by the parties due to the fact that the court has fulfilled the said constitutional duty, the court may take into account the fact that its application to the Constitutional Court or another court having jurisdiction over the compliance of the legal act applicable in the case under consideration with higher-ranking legislation, or its reference to the Court of Justice of the European Union, is aimed not only to examine the particular case in a fair manner, but also to ensure the supremacy of the Constitution and the constitutional imperative of the rule of law in the legal system, as well as the constitutional obligation of the Republic of Lithuania to properly implement the requirements of European Union law. In view of the importance for the legal system of such an application by a court to the Constitutional Court or another court having jurisdiction over the compliance of the legal act applicable in the case under consideration with higher-ranking legislation, or in view of the importance for the legal system of such a reference by a court to the Court of Justice of the European Union, the legislature may provide that the necessary and reasonable costs (or part thereof) incurred by the parties as a result of such an application or reference by the court are compensated from the state budget.

The investigation of the factual circumstances on which an individual substatory legal act is based falls within the competence of a court applying to the Constitutional Court for the assessment of the constitutionality of the said legal act

The Constitutional Court's decision of 23 January 2019

... the investigation of the factual circumstances and data that form the basis of individual substatory legal acts, as well as the assessment of the reasonableness and sufficiency of data, primarily falls within the competence of the courts considering the respective cases (*inter alia*, the rulings of 13 August 2007 and 2 March 2018).

9.1.6. Court proceedings and court decisions

The administration of justice in criminal cases (Paragraph 1 of Article 109 of the Constitution)

The Constitutional Court's ruling of 16 January 2006

... The administration of justice is a function of courts and it determines both the place of the judiciary in the system of institutions of state power and the status of judges. Neither any other state institution nor any other state official may exercise this function (rulings of 21 December 1999 and 13 May 2004).

Under the Constitution, *inter alia*, Article 109 thereof, and under the principles of a state under the rule of law and justice, in the course of criminal proceedings, a court has the duty to make use of all possibilities in order to establish the objective truth in a criminal case and to adopt a just decision in respect of a person who is accused of committing a criminal act. A court of first instance also has such a duty. The Constitutional Court has held that, in criminal procedure law, the provision of Paragraph 1 of Article 109 of the Constitution, whereby justice is administered only by courts, means that, *inter alia*, during a trial, a

court of first instance, when carrying out this function, must thoroughly, fully, and objectively investigate all circumstances of a criminal case and decide the case on its merits (ruling of 5 February 1999).

Under Paragraph 1 of Article 111 of the Constitution, the courts of the Republic of Lithuania are the Supreme Court of Lithuania, the Court of Appeal of Lithuania, regional courts, and district courts. These courts constitute the system of courts of general jurisdiction. Paragraph 2 of Article 111 of the Constitution provides that, for the consideration of administrative, labour, family, and cases of other categories, specialised courts may be established. Thus, the instance system of courts is established in the Constitution, *inter alia*, in the said provisions of Paragraphs 1 and 2 of Article 111 of the Constitution. The purpose of the instance system of courts is to remove the possible mistakes of courts of lower instances, to prevent any execution of injustice, and, thus, to protect the rights and legitimate interests of a person, society, and the state.

The legislature must, by means of a law, establish such powers (jurisdiction) of all courts of general jurisdiction of all instances and of all specialised courts, established under Paragraph 2 of Article 111 of the Constitution, that would be constitutionally justifiable. In this context, it needs to be noted that the constitutional concept of the administration of justice also implies that courts must decide cases only by strictly adhering to the procedural and other requirements established in laws, without overstepping the limits of their jurisdiction, and not exceeding their other powers.

... the necessity to protect the rights and legitimate interests of a person, also the fact that a court is a state institution that, when administering justice, helps the state ensure the security of a person and all society from criminal attempts, determine certain powers of a court in criminal proceedings. In criminal proceedings, a court must be an impartial arbiter, who objectively assesses the data (evidence) in a criminal case regarding the circumstances of committing a criminal act and who adopts a fair decision concerning the guilt of a person accused of having committed the said criminal act; at the same time, in order to establish the objective truth, a court must take an active part in criminal proceedings – a court must define the limits of the consideration of a criminal case, must perform certain procedural actions, must ensure that persons participating in court proceedings do not abuse their rights or powers, and must resolve other issues related to the consideration of a criminal case in a court. While considering a criminal case, a court must act in such a way that the objective truth is established in a criminal case and the question of the guilt of a person accused of having committed a criminal act is fairly resolved. A court must also be equally just to all persons who participate in criminal proceedings.

Thus, the norms and principles consolidated in the Constitution, *inter alia*, the right of persons to a public and fair hearing of their case by an independent court, as consolidated in Paragraph 2 of Article 31 of the Constitution, as well as the principles of a state under the rule of law and justice, imply the model of a court as an institution administering justice where a court may not be understood as a “passive” observer of court proceedings and where the administration of justice may not depend solely on the material submitted to a court. Seeking to investigate all circumstances of a case objectively and comprehensively and to establish the truth in a case, a court has the powers either to perform procedural actions by itself or to assign certain institutions (officials), *inter alia*, prosecutors, to perform such actions.

In this context, it needs to be noted that the principle of the separation of powers, which is consolidated in the Constitution, determines the relationships of a court with other state institutions or officials and the nature of its actions in criminal proceedings. Courts are the only state institution that administers justice. Justice is administered by a court following a certain procedural order, which is regulated by law. It also needs to be mentioned that the constitutional function of a court – the administration of justice – is essentially different from being in charge of the pretrial investigation of a case, control over this investigation, upholding charges on behalf of the state, etc. When administering justice, a court considers a case that is already prepared, solves the issue of the guilt of a defendant and either imposes punishment on him/her or acquits him/her (rulings of 5 February 1999 and 8 May 2000).

The powers of a court in criminal proceedings to assign a pretrial investigation or separate procedural actions

See 3. Legal responsibility, 3.2. Criminal proceedings, the ruling of 16 January 2006.

The limits of the consideration of criminal cases at the court of appeal instance; the possibility for a court to overstep the limits of an appeal in the course of defending the public interest

The Constitutional Court's ruling of 21 September 2006

... as such, the principle of *tantum devolutum quantum appellatum* does not imply that the court of appeal instance must be restricted by the limits of an appeal when its decision could be essentially unjust and when this could violate constitutional values.

[...]

... as such, the general rule that the court of appeal instance may not overstep the limits defined in an appeal (which expresses the principle of *tantum devolutum quantum appellatum*) may not be regarded as groundless or unjust, as it ensures not only the speed of civil proceedings, but also the fact that there will be no intervention by the court in such areas of life where there is no dispute among private persons or such a dispute has already been solved in the court of first instance and the decision was not appealed in accordance with the procedure prescribed by law. There are no arguments that would allow stating that this general rule could in any aspect be in conflict with any provision of the Constitution, *inter alia*, with Paragraph 1 of Article 29 or Article 109 of the Constitution. Quite to the contrary, this rule helps to ensure the autonomy of an individual, in particular, of a private person when a court administers justice, as well as the fact that the legitimate expectations and interests of a person will not be denied.

[...]

However ... under the Constitution, the establishment of any such a legal regulation to the effect that a court, having received an application, would not be able to defend the public interest or where a court, while deciding a case, would be forced to adopt a decision that would itself violate the public interest and, thus, also a certain value (*inter alia*, a person's right or freedom) consolidated, defended, and protected by the Constitution, is not allowed. If a court adopted such a decision, that decision would be unjust. This would mean that, in the name of the Republic of Lithuania, such a court would administer not the justice that is consolidated in the Constitution, but, under the Constitution, no justice at all. In such a way, the constitutional concept of a court as an institution implementing justice in the name of the Republic of Lithuania would also be denied.

... it is not allowed to establish, by means of a law, any final list of cases where a court (also a court of appeal instance) is permitted to defend the public interest (*inter alia*, by overstepping the limits of an appeal) or any final list of cases where a court is not permitted to defend the public interest (*inter alia*, by overstepping the limits of an appeal).

On the other hand, it should be emphasised that the possibility for a court of appeal instance, which stems from the Constitution, to overstep the limits of an appeal while defending the public interest may not be interpreted as its purely discretionary right: such a court may overstep the said limits only when there is a constitutional basis for this, i.e. when, without overstepping them, a certain value consolidated, defended, and protected by the Constitution would be violated and, thus, a decision adopted by the court of appeal instance in the respective case would be unjust. In all cases, such a court must provide reasons for that.

Requirements for a legal regulation governing civil proceedings

The Constitutional Court's ruling of 21 September 2006

... in general, no prohibition arises from the Constitution to establish such a legal regulation governing civil proceedings whereby, in cases where a party to proceedings withdraws from the participation in the consideration of a civil case of its own will and refuses to cooperate in the consideration of the case, a court would have the powers to consider such a civil case and adopt a decision also where a party to the proceedings has withdrawn of its own will and does not cooperate with the court. Quite to the contrary, civil proceedings must be regulated by means of a law in such a manner that no preconditions would be created for delaying the consideration of cases, the adoption and execution of decisions, thus, participants to civil proceedings (including parties to proceedings) would be prevented from abusing their procedural

and other rights and the rights of, *inter alia*, a party to proceedings that participates in the consideration of a civil case in good faith would not be violated. ...

At the same time, it needs to be noted that the legislature, when regulating the respective relationships by means of a law, must pay regard to the Constitution, *inter alia*, the constitutional principles of a state under the rule of law, the equality of rights, the public and fair consideration of cases, the impartiality and independence of judges. It is necessary to establish, in laws, such a legal regulation whereby jurisdictional institutions and other law-applying institutions would be independent and impartial, that they would seek to establish the substantive truth in a case and adopt all decisions on the grounds of law, as well as that regard would be paid to the constitutional right of a person to the due process of law, which is derived from, *inter alia*, the constitutional principle of a state under the rule of law and is inseparably related to it.

Thus, under the Constitution, civil procedure relationships must be regulated by means of a law in such a manner that would create the legal preconditions for a court to investigate all circumstances important for a case and to adopt a just decision in such a case. And, on the other hand, it is not allowed to establish any such a legal regulation that would not permit a court, after it takes account of all important circumstances of a case and follows law, without violating the imperatives of justice and reasonableness, which arise from the Constitution, to adopt a just decision in a case and, thus, to administer justice. Otherwise, the powers of a court to administer justice, which arise from, *inter alia*, Article 109 of the Constitution, would be limited or even denied and the constitutional concept of a court as the institution that administers justice in the name of the Republic of Lithuania, as well as the constitutional principles of a state under the rule of law and justice, would be deviated from.

Under the Constitution, when civil procedure relationships are regulated, the right of a party to proceedings to participate in the consideration of a case directly or through a representative may not be denied, either, providing it itself has not self-removed from such participation. A party to the proceedings must be properly notified about the consideration of a case, while a court, at the beginning of the consideration of the case, must ascertain whether it has been informed about any valid reasons due to which a party to the proceedings is not participating (it has not submitted its position in writing as regards the dispute, it does not request the extension of the time limit for the submission of its position, it fails to appear at a court hearing, etc.).

The constitutional obligation of a court to decide a case justly implies that, where the court believes that, if after one party to proceedings has self-removed from participating in the consideration of the case, it will not be able to consider that case justly or to adopt a just decision, it must take all possible measures in order to ensure the participation of such a party in the consideration of the case.

It also needs to be noted that, under the Constitution, the legal regulation of civil procedure relationships must be such that those participants to proceedings that have the same legal status would be treated equally. Thus, they must also have the same rights and duties, unless there are differences of such a nature and scope that unequal treatment would be objectively justified. Otherwise, the constitutional principles of a state under the rule of law and the equality of the rights of persons would be deviated from.

The Constitution also implies certain requirements that must be complied with by the legislature when it regulates appeals against court decisions adopted after a case is considered.

For instance, in its ruling of 16 January 2006, the Constitutional Court held that, under the Constitution, a law must establish such a legal regulation that would make it possible to file an appeal with a court of at least one higher instance against a final act adopted by a court of general jurisdiction or specialised court (established under Paragraph 2 of Article 111 of the Constitution) of first instance. ... when civil procedure relationships are regulated by means of a law, also such a legal regulation must be established whereby it would be possible to file an appeal with a court of at least one higher instance against any final act that was adopted in a case by a court of first instance. It needs to be emphasised that a law must establish not only the right of a party to proceedings to file an appeal with a court of at least one higher instance against a final act that was adopted in a case by a court of first instance, but it must also establish such a procedure for filing the said appeal that would allow correcting the possible mistakes

made by a court of first instance. Otherwise, the constitutional principle of a state under the rule of law would be deviated from and the constitutional right of a person to the due process of law would be violated.

At the same time, it needs to be noted that the Constitution does not prevent regulating civil proceedings in such a manner that would create no legal preconditions for parties to proceedings to abuse their right to appeal against a decision adopted in their case and, thus, to delay the proceedings.

... courts must pay regard to the principles and norms of civil procedure law. It needs to be emphasised that this duty of a court may not be interpreted as allowing raising the principles and norms of civil procedure law or those of civil law above the principles and norms of the Constitution, or as permitting the interpretation of the principles and norms of civil procedure law or those of civil law in such a manner that would distort or ignore the meaning of the provisions of the Constitution.

[...]

It needs to be noted that, when account is taken of the objectives, essence, and nature of the adoption of a decision *in absentia* as a specific institution of civil procedure law and, especially, of the fact that such an institution is aimed at preventing both the abuse of the rights by parties and the delay of proceedings and at creating the legal preconditions for, *inter alia*, the protection of the rights and legitimate interests of honest parties to proceedings, certain limitations on reviewing a decision adopted *in absentia* are possible. Such limitations may be justified when a party to proceedings withdraws from the participation in the consideration of a civil case of its own will and when a court that is deciding whether to review a decision adopted *in absentia* is not provided with evidence confirming that the respective court decision is clearly unjust.

However, such legal situations are also possible where a court that is deciding whether to review a decision adopted *in absentia* is provided with such evidence that confirms that a certain court decision was clearly unjust and that the said decision clearly violated the rights of a person.

Requirements imposed on final court acts and on the publication thereof (*inter alia*, the requirement that an entire final court act (all arguments thereof) must be drawn up before it is officially passed and publicly pronounced)

The Constitutional Court's ruling of 21 September 2006

... the legislature must regulate court proceedings by means of laws in such a manner that the rational organisation of court work would be ensured.

When interpreting Article 109 of the Constitution in the context of other provisions of the Constitution, *inter alia*, that of the constitutional principles of a state under the rule of law, justice, the due process of law, legal clarity, legal certainty, and the publicity of law, in its ruling of 16 January 2006, the Constitutional Court held that:

“The constitutional imperatives that only courts administer justice, that law must be public, as well as the requirement, stemming from the Constitution, that a case must be considered in a fair manner, also imply that every court judgment (or another final court act) must be based on legal arguments (reasoning). The argumentation must be rational: a court judgment (or another final court act) must contain as many arguments as necessary in order that it would be sufficient to substantiate such a court judgment (or another final court act). In this context, it needs to be noted that the requirement of legal clarity, which arises from the constitutional principle of a state under the rule of law, means, *inter alia*, that a court judgment (or another final court act) may not contain any concealed arguments or any non-specified circumstances that are important for adopting a fair court judgment (or another final court act). Court judgments (other final court acts) must be clear for the persons participating in a case and for other persons. If this requirement is disregarded, then this is not the administration of justice that is consolidated in the Constitution.

While interpreting Article 109 of the Constitution in the context of the requirements of legal clarity, legal certainty, and legal publicity, as well as the requirement that human rights and freedoms, which arise from the constitutional principle of a state under the rule of law, must be ensured, it needs to be noted that the administration of justice also implies that a court judgment (or another final court act) is an integral legal act in which the operative part is based on the arguments set out in the part of reasoning. This means,

inter alia, that when a court judgment (or another final court act) is officially published, it must contain all arguments upon which it is based, that the arguments (or part thereof) of a court judgment (or another final court act) may not be submitted by a court after the official publication of such a court judgment (or another final court act), and that, after the official publication of a court judgment (or another final act of the court), such a court may not change or otherwise modify its arguments.

In this context, it needs to be noted that, if such a court judgment (or another final court act) were published officially that would not be based on legal arguments or would be based only on a certain part of such arguments, while the remaining part of the arguments would be made public after the official publication of such a court judgment (or another final court act), justice would not be administered – there would always be a reasonable doubt that such arguments only seek to justify such a court judgment (or another final court act) that was adopted *a priori*.

Under the Constitution, the legislature has the powers to establish reasonable time limits within which a reasoned court judgment (or another final court act) must be published and, if necessary, to establish exceptions to the establishment of the general rules.

It needs to be emphasised that the said requirements concerning a judgment (or another final court act), its reasoning, publication, and time limits are *mutatis mutandis* applicable not only to criminal proceedings, but also to other types of legal proceedings.”

... it needs to be emphasised that no cited doctrinal provision of the Constitutional Court’s ruling of 16 January 2006 may be interpreted as the one that constitutionally obligates a court not only to draw up its final act (decision, judgment, order, ruling) before it is adopted and published, but also to pronounce it in the courtroom by reading aloud the entire text of that final act (which sometimes may be very long).

At the same time, it needs to be noted that the legislature, while seeking to ensure the rational organisation of court work and by taking account of the particularities of individual kinds of proceedings, may provide, by means of a law, certain specially discussed exceptions when a final court act need not be read aloud in the courtroom; in such cases, a final court act must be pronounced publicly in another way. It needs to be emphasised that, when the said exceptions are established by means of a law, no preconditions may be created by which the rights and freedoms of a person and other constitutional values would be violated.

Of course, while paying regard to the constitutional imperative of the publicity of law, the introductory and operative parts of an adopted final court act, which is signed by the judges, must be pronounced publicly by reading them aloud in the courtroom (save the said exceptions). As regards reading aloud other parts of a final court act in the courtroom, the legislature may also establish a different legal regulation; such a legal regulation would most appropriately conform to various provisions of the Constitution (*inter alia*, the requirement of the publicity of law) where a court would be able in each case to decide, at its discretion, as to which part or parts of its final act must be pronounced publicly by reading them aloud in the courtroom, save the introductory and operative parts, which must always be read aloud in the courtroom (save the said exceptions). If a final court act is adopted and signed by all judges who have considered the respective case, the non-reading aloud of part of the act should not be regarded as deviation from justice, the publicity of law, and other constitutional imperatives. The most important thing here is not that an entire final court act (*inter alia*, all arguments substantiating it – the reasoning of its adoption) should be read aloud in the courtroom, but that it all would be drawn up before that final court act is adopted, i.e. before the judges vote on it and sign it, and before such a final court act is publicly pronounced, also that, straight after the court hearing in which the respective final court act is pronounced, immediately, i.e. within the reasonable and shortest possible time, the said final court act (its copy) would be accessible to the parties to the case, to other participants of the proceedings with respect to whom such a final court act directly gives rise to certain legal effects, as well as to institutions that must execute the respective court decisions.

By means of each final court act, justice is administered in a particular case. A final court act adopted in a certain case is one act of the application of law, whereby that case is completed. Thus, a final court act is one legal act, one document, but not several legal acts (documents), let alone not several legal

acts (documents) that are drawn up and signed at a different time. A final court act must be an integral act. As an integral legal act, it must be signed by all judges who have considered the respective case. A final court act must not be ambiguous; it must be clear and comprehensible already at the time when a decision on the merits of the considered issue is adopted and publicly pronounced, but it must not be such an act that would make the parties and other participants to the proceedings guess why and due to what actual reasons precisely this court decision in question and not a different court decision was adopted.

It needs to be especially emphasised that the requirement for the integrity of a final court act (by which justice is administered in a particular case) expresses such a characteristic of the said act without which this act would not be an act of the administration of the justice that is provided for in the Constitution; thus, under the Constitution, it would not be an act of the administration of justice.

The requirement of the integrity of a final court act, which arises from the Constitution, also means that the operative part of such an act must always, without exceptions, be substantiated by the circumstances and arguments that are *expressis verbis* set out in the fact-finding part and/or the reasoning part (if, according to laws, there must be a separate fact-finding part or a separate reasoning part). Thus, a final court act may not, under any circumstances, be “stitched” from separate fragments (separate documents), which are drawn up at a different time.

It needs to be held that the requirement of the integrity of a final court act, which arises from the Constitution, and the constitutional imperative that a court adopts decisions in the name of the Republic of Lithuania, that a final court act, regardless of whether it is pronounced in its entirety (by reading it aloud) in the courtroom, or whether only its introductory and operative parts are pronounced, or whether it is made public in another way (if this is one of the exceptions discussed in this ruling of the Constitutional Court, which is constitutionally allowed), must always be signed by all the judges who have considered the case. If such a court decision is not confirmed by the signatures of the judges (or if some of its fragments as separate documents are signed by the judges, while other fragments are not or are signed by not all of the judges), it should not be regarded as a final court act and its reasonableness and lawfulness may be questioned.

A law must establish such a legal regulation that would effectively guarantee that decisions that have not been signed by judges will not be adopted or pronounced and that, where such decisions are still adopted, there must be the possibility of challenging them.

[...]

... it needs to be especially emphasised that the drawing up of any final court act (decision, judgment, order, ruling) before its official adoption (i.e. before the judges vote on it and sign it) and its official pronouncement is not an objective in itself; rather, it is a means allowing ensuring that all circumstances important for the case will be established precisely before a certain final court act is officially adopted and publicly pronounced, that all important arguments will be assessed and all of them weighed properly before that final court act is officially adopted, that legal acts will be properly applied, etc. The fact is of no less importance that the drawing up of a final court act before it is officially adopted and publicly pronounced is one of the means making it possible to achieve such a situation where all judges of the panel (in cases where a case is considered not by one judge, but by a panel of judges) will equally understand all the arguments substantiating a final court act (even if they will interpret and assess these arguments differently), because only after the arguments – the reasoning of its adoption – substantiating a final court act are drawn up, it is possible to verify and ascertain that they are not inconsistent or that they do not conflict with one another and are without other faults and, if this is so – to modify these arguments; therefore, it is necessary that such arguments be drawn up before a final court act is officially adopted and pronounced.

Thus, the drawing up of a final court act before its official adoption and public pronouncement is one of the legal guarantees that justice will be administered in the respective case; if it were otherwise, i.e. if a final court act were not substantiated by legal arguments or were substantiated only by a certain part of arguments, while the other part of arguments were drawn up and made public later, after the public pronouncement of the respective final court act, justice would not be administered, since there would

always be a reasonable doubt whether such arguments drawn up later seek to justify a final court act adopted *a priori*; thus, there would also be a doubt as to whether such a final court act is actually substantiated solely by arguments (reasoning) that are formally drawn up therein.

At the same time, it needs to be noted that the legislature has the unquestionable powers to establish, by means of a law, a structure of a final court act, *inter alia*, the fact that in a final court act there should be a separate part or parts where certain circumstances of a case, arguments, etc. must be set out. In addition, the legislature, while taking account of the variety of types of considered cases, the particularities of legal proceedings in consideration of cases of certain categories, and other important factors, may also establish, by means of a law, a different structure of final court acts for cases of certain categories and/or for certain courts.

However, under the Constitution, it is not permitted to establish any such a legal regulation whereby a court must or could adopt, at its discretion, let alone adopt and publicly pronounce, its final acts not in their entirety, but only a certain part or parts thereof, *inter alia*, their operative part, which is not substantiated by arguments drawn up, i.e. set out *expressis verbis*, or by circumstances specified in that final act, and whereby such arguments could be drawn up and the relevant circumstances could be specified after some time.

As mentioned before, a final court act must be clear and comprehensible already at the time when a decision on the merits regarding the considered issue is adopted and publicly pronounced, but it must not be such an act that would make the parties and other participants to the proceedings guess why and due to what actual reasons precisely this court decision in question and not a different court decision was adopted.

In this context, it needs to be mentioned that, if a final court act is drawn up not in its entirety before it is officially adopted and publicly pronounced, especially when its operative part is pronounced before the arguments substantiating the final court act – the reasoning of adopting it – are drawn up, then during the whole time until these arguments (reasoning) are drawn up, there will always be the possibility that a certain judge or judges of the panel that has considered the case and adopted the decision on the merits (which was set out in the operative part of the respective final court act), due to certain circumstances in life, from which no one is immune, which are always possible and may fall upon any individual (for example, sickness, an accident, or even death), will not be able to continue his/her participation in drawing up the arguments substantiating the said court decision (its operative part) that had already been adopted and publicly pronounced. Consequently, in such cases, a final court act in general will not be able to be drawn up; although publicly pronounced (i.e. although its operative part has been pronounced), it will remain unfinished and not fully fledged, or the said arguments will be drawn up (will be signed) not by all judges of the panel, but only by some of them; in other words, the composition of the court will not be exactly the same. While, if a case was investigated not by a panel of judges, but by a single judge, the said circumstances in life, should they occur, would lead to a situation where there would be no one who could draw up the arguments substantiating a final court act – the reasoning of adopting it – after its operative part is adopted and publicly pronounced. It is clear that, in such cases, justice would be administered only formally; thus, in reality, it would not be administered.

Summing up, it needs to be held that the Constitution does not tolerate any such a legal and factual situation where a final court act (decision, judgment, order, ruling) is officially adopted and publicly pronounced not in its entirety, *inter alia*, when the operative part (in which a decision on the merits is set out) is officially adopted and publicly pronounced, while the arguments substantiating the operative part (i.e. a court decision set out in the operative part) – the reasoning of adopting such a final court act – are drawn up later, *post factum*.

Under the Constitution, such final court acts are not regarded as acts of the administration of justice, which, under the Constitution, are adopted in the name of the Republic of Lithuania; quite to the contrary, such final court acts themselves can create the preconditions for violating the rights and freedoms of a person and other values consolidated, defended, and protected by the Constitution.

The protection of state secrets (other classified information) in court proceedings; the right of a judge to have access to a state secret or other classified information (Articles 109 and 117 of the Constitution)

The Constitutional Court's ruling of 15 May 2007

When revealing the content of the constitutional institution of a state secret, it should ... be noted that the Constitution consolidates the grounds for the protection of information that is not subject to publication, *inter alia*, a state secret, when courts consider and decide cases: Paragraph 1 of Article 117 of the Constitution provides that, "In all courts, the consideration of cases shall be public" and that "A closed court hearing may be held in order to protect the secrecy of private or family life, or where the public consideration of the case might disclose a state, professional, or commercial secret". Thus, the constitutional principle of the public consideration of cases in courts is not absolute or without exceptions, *inter alia*, as regards the fact that there can be a closed court hearing if publicity posed the threat that a state secret might be disclosed.

Paragraph 1 of Article 109 of the Constitution, whereby, in the Republic of Lithuania, justice is administered only by courts, gives rise to the duty of courts to consider cases justly and objectively, as well as to adopt reasoned and substantiated decisions; therefore, there may not be any such a legal situation where a court would not be able to have access to such case material that contains information constituting a state secret (or other classified information). In its ruling of 19 December 1996, the Constitutional Court held that "the right of a judge who investigates a case to have access to information that is considered a state secret is based on Article 109 of the Constitution ... as well as on Article 117 of the Constitution" and that "the right of a judge to have access to information that is considered a state secret and is necessary for the investigation of a case is determined by the function of a court as a state institution to administer justice, but not by entering the position of a judge on the list of certain positions".

The possibilities for parties to a case considered by a court to have access to information that constitutes a state secret (as well as other classified information), where the court decides that this information may be regarded as evidence in the case, must be defined in laws; it is necessary to establish such a legal regulation that would create the conditions for a court considering a case to protect state secrets (as well as other classified information) from such disclosure that could inflict harm on the public interest protected by the Constitution.

[...]

In view of the fact that, on the one hand, the necessity to protect information constituting a state secret (or other classified information) is a public interest and, on the other hand, it is necessary to ensure the right of a person to judicial protection, a law must establish the grounds, procedure, and conditions for access to information constituting a state secret (or other classified information) in the course of the consideration of a case by a court, provided the court decides that information in question may be regarded as evidence in the case; it is also necessary to establish such a legal regulation governing the respective procedural actions that would ensure the compliance with the constitutional principle of proportionality and would maintain a balance between the two said constitutional values – the protection of a state secret (or other classified information) as a public interest and the rights and freedoms of a person that are defended by the said person in a court. It is necessary to establish such a legal regulation whereby a court could administer justice without denying any of these values.

Consequently, a law must establish such a legal regulation whereby, on the one hand, a party to a case may request the court to declare certain information that constitutes a state secret (or other classified information) to be evidence in the said case (if such information, in the opinion of the said party, has an evidential value) and, on the other hand, the court must every time decide whether such a request is a justified one and whether it may be granted (either in its entirety or in part) according to the law, whether, in the case where it is granted (either in its entirety or in part), the public interest (to ensure the protection of a state secret (or other classified information)), as well as the values consolidated, defended, and protected by the Constitution, *inter alia*, the rights and freedoms of other persons, as well as international obligations of the Republic of Lithuania, will be harmed. As such, the said right of a party to a case to

request the court to declare such information that constitutes a state secret (or other classified information) to be evidence in the respective case does not imply that the court must grant such a request (either in its entirety or in part) or that the said party must have access to information constituting a state secret (or other classified information); the fact that certain information constituting a state secret (or other classified information) could be evidence in a certain case depends on many factors that must be taken into account by the court. In this context, it should be mentioned that, as it has been held by the Constitutional Court, the public interest is dynamic and subject to change (rulings of 8 July 2005 and 21 September 2006); the public interest is very varied; therefore, it is virtually impossible to say *a priori* in which spheres of life, due to which legal disputes may arise or in which the need may arise to apply law, threats may occur to the public interest (*inter alia*, the protection of secrets that must be protected under the international obligations of the Republic of Lithuania) or the need may arise to ensure the public interest by means of interference by public power institutions or officials. Thus, it is impossible to define (enumerate) *a priori* all situations where information that constitutes a state secret (or other classified information) may not be declared to be evidence by a court decision and, thus, parties to a case may not have access to such information. However, obviously, if a court deems that, in order to adopt a decision in the case before it and to administer such justice as consolidated in the Constitution, there is enough such evidence (material) that is not information constituting a state secret (or other classified information), then information not to be disclosed should not, in order to protect the public interest, be evidence in that case and the parties to the case may not have access to it.

It needs to be emphasised that special responsibility falls upon a court that considers a case where it decides whether certain information constituting a state secret (or other classified information) may be declared to be evidence in the respective case.

[...]

At the same time, it needs to be emphasised that no court decision may entirely be substantiated by information constituting a state secret (or other classified information), which is unknown to the parties (one party) to the case.

It also needs to be emphasised that court decisions, *inter alia*, decisions whereby certain information constituting a state secret (or other classified information) is not evidence in the respective case, may be appealed against in accordance with the procedure prescribed in laws.

It needs to be noted that the legal regulation governing the discussed legal relationships may have certain particularities determined by the fact whether cases are considered according to criminal procedure, civil procedure, or administrative procedure.

Filing a complaint against a final act of a court of first instance (initiating the review of such an act); the prohibition preventing courts of higher instances from assessing the lawfulness or reasonableness of such orders of courts of lower instances by which they apply to the Constitutional Court

The Constitutional Court's ruling of 24 October 2007

... as held in the Constitutional Court's ruling of 21 September 2006, under the Constitution, civil procedure relationships must be regulated by means of a law in such a way that would create the legal preconditions for a court to investigate all circumstances that are important for a case and to adopt a just decision in such a case and that would make it possible to file an appeal with a court of at least one higher instance against any final act that was adopted at a court of first instance. In the same ruling, the Constitutional Court also held that a law must establish not only the right of a party to proceedings to file an appeal with a court of at least one higher instance against a final act that was adopted in a case by a court of first instance, but it must also establish such a procedure for filing the said appeal that would allow correcting the possible mistakes made by a court of first instance; otherwise, the constitutional principle of a state under the rule of law would be deviated from and the constitutional right of a person to the due process of law would be violated. It was also held in the same ruling of the Constitutional Court that, "by

each final court act, justice is administered in a particular case” and that “a final court act adopted in a certain case is one act of the application of law, whereby that case is completed”.

In the context of the necessity (which arises from the Constitution) to provide for the possibility of filing an appeal with a court of at least one higher instance against any final act that was adopted in a case by a court of first instance, it needs to be noted that, until the adoption of a final act by a court in a case, the court has to adopt the procedural decisions of a varied form and nature, by which such a case is not completed. Such procedural court decisions are not final acts of a court. The Constitution does not require that the possibility be ensured, by means of a law, to file a complaint against any procedural decision of a court (i.e. not a final act) adopted in a case; various exceptions are possible in this area. Attention should be paid to the fact that, as held in the Constitutional Court’s ruling of 21 September 2006, the Constitution does not prevent regulating civil proceedings in such a manner that would create no legal preconditions for parties to proceedings to abuse their right to appeal against a decision adopted in their case and, thus, to delay the proceedings.

In this context, it should be noted that the phrase “filing a complaint with a court of at least one higher instance against a final act that was adopted in a case by a court of first instance” is used in the jurisprudence of the Constitutional Court (as well as in this ruling of the Constitutional Court) in its constitutional legal meaning, but not in the manner that this phrase could be used (is used) in ordinary law. The legislature, while regulating civil procedure relationships, has a certain degree of discretion to establish various grounds and time limits for filing such a complaint, as well as various judicial institutions with which it is allowed to file a complaint against final acts of a court of first instance, and to consolidate separate institutions in civil procedure laws. In exceptional cases and only if it is possible to substantiate it constitutionally (*inter alia*, by the fact that it is not allowed to create any such legal preconditions that could permit parties to proceedings to abuse their right to file a complaint against a decision adopted in their case and, thus, to delay the proceedings), a law may establish (without creating any legal preconditions for violating the rights of a person or other constitutional values or for deviating from the requirements of the due process of law) such a legal regulation that would make it possible to file a complaint against certain final acts adopted by a court of first instance not with a court of higher instance, but with the court that adopted the respective final act (every such situation could be subject to constitutional review). In this respect, the notion “filing a complaint” (which, as mentioned before, is used not in the ordinary, but constitutional legal sense) encompasses not only filing the respective complaint (of appeal or cassation level) provided for in civil procedure laws, by means of which attempts are made to initiate the review of this final act (also to renew the consideration of the case), but also other situations of filing a complaint against a final act adopted by a court of first instance. In defining such situations, civil procedure laws may consolidate various notions (not only the notion “filing a complaint”), which reflect the respective separate institutions of civil procedure. However, the Constitution does not allow establishing any such a legal regulation whereby, in cases of a certain category, it would be altogether impossible in all situations to seek to initiate a review of a final act adopted by a court of first instance in the respective case, since, thus, the possibility of correcting the possible mistakes made by the court, applying law justly, and administering justice would be denied; upon establishing such a legal regulation, the constitutional concept of justice would be limited only to formal and nominal justice administered by a court and only to the appearance of justice administered by a court, but it would not mean the justice that is consolidated, protected, and defended by the Constitution; a legal regulation laid down in civil procedure laws (i.e. in ordinary law) would be placed above the principles and norms of the Constitution.

It needs to be emphasised that a court, while suspending the consideration of a case because of the application to the Constitutional Court or an administrative court, does not decide such a case on its merits, but only creates the preconditions for adopting a just final act in the said case after receiving an answer from the Constitutional Court or the administrative court. ... in cases where a court considering a case faces doubts whether a law (another legal act) applicable in the case is in conformity with the Constitution, it must apply to the Constitutional Court and request it to decide whether that law (another legal act) is in compliance with the Constitution and, until the Constitutional Court decides this issue, the consideration

of the case in that court must not be continued, i.e. it must be suspended. Thus, the application to the Constitutional Court or an administrative court and the suspension of a case in which it was decided to apply to the Constitutional Court or an administrative court are procedural actions, which are inseparably interrelated.

[...]

... since a court order by which the consideration of a case is suspended and the court applies to the Constitutional Court or an administrative court does not complete the case, such an order is not a final act of the court and the Constitution does not guarantee the possibility of filing a complaint against such an order with a court of at least one higher instance.

On the other hand, the fact that the Constitution does not require that the possibility be ensured by means of a law to file a complaint against any court procedural decision (i.e. not a final act) adopted in a case does not mean that a court, while adopting such a decision, may disregard the requirements established for acts and, in particular, final acts adopted by courts. The requirements established (*inter alia*, regarding argumentation, clarity, and comprehensiveness) for final acts of courts are also applicable to decisions adopted by courts of general jurisdiction or by specialised courts (established under Paragraph 2 of Article 111 of the Constitution) to apply or (even though this is requested by a party to a case before that court) not to apply to the Constitutional Court with a petition requesting an investigation into and a decision on whether a legal act (part thereof) passed by the Seimas, the President of the Republic, or the Government or that adopted by referendum, where the said legal act (part thereof) must be applied in the case before the court, is in conflict with a higher-ranking legal act, *inter alia* (and, first of all), with the Constitution (ruling of 28 March 2006 and the decision of 5 July 2007).

[...]

It needs to be emphasised that, under the Constitution, the grounds for initiating a constitutional justice case at the Constitutional Court are doubts faced by a court (judge) considering a concrete case regarding the conformity of a legal act applicable in that case with the Constitution (another higher-ranking legal act): such doubts must be removed so that the said court could adopt a just decision (another final act) in that case. It is only the Constitutional Court that may remove such doubts (i.e. deny or confirm their reasonableness) within its competence. Thus, no court of general jurisdiction or specialised court (established under Paragraph 2 of Article 111 of the Constitution) of higher instance has the powers to assess the lawfulness and/or reasonableness of an order of a court of lower instance to suspend the consideration of a case and to apply to the Constitutional Court regarding the compliance of a legal act (part thereof) with the Constitution (another higher-ranking legal act), since, otherwise, the preconditions would be created for violating the exclusive competence of the Constitutional Court, which is established in Paragraph 1 of Article 102 of the Constitution, as well as for virtually denying the powers of a court (judge) (which are established in Paragraph 2 of Article 110 and Paragraphs 1, 2, and 3 of Article 106 of the Constitution) to suspend the consideration of a case and apply to the Constitutional Court.

The prohibition (which stems from the Constitution) preventing courts of higher instance from assessing the lawfulness and/or reasonableness of an order of a court of lower instance to suspend the consideration of a case and to apply to the Constitutional Court regarding the compliance of a legal act (part thereof) with the Constitution (another higher-ranking legal act) is also *mutatis mutandis* applied to the orders of courts on applying to the respective administrative court with a petition requesting an investigation into whether a legal act (part thereof) that must be applied in the particular case and the review of which in terms of its compliance with higher-ranking legal acts, *inter alia* (and, first of all), with the Constitution, is assigned to the jurisdiction of administrative courts, but not the Constitutional Court, is in conflict with the Constitution (another higher-ranking legal act).

The right to file an appeal against a final act of a court of first instance

The Constitutional Court's ruling of 24 January 2008

... as it has been held by the Constitutional Court, the constitutional right of a person to apply to a court and the instance system of courts imply that a law must establish such a legal regulation that would

make it possible to file an appeal with a court of at least one higher instance against a final act adopted by a court of general jurisdiction or specialised court (established under Paragraph 2 of Article 111 of the Constitution) of first instance (rulings of 16 January 2006, 28 March 2006, 21 September 2006, 27 November 2006, and 24 January 2007). Justice is always administered by leaving the possibility of rectifying a possible mistake or changing a judgment in the light of new circumstances (ruling of 9 December 1998). The Constitutional Court has held that a law must establish not only the right of a party to the proceedings to file an appeal with a court of at least one higher instance against any final act that was adopted in a case by a court of first instance, but also it must establish such a procedure for filing the said appeal that would allow a court of higher instance to correct the possible mistakes made by a court of first instance; otherwise, the constitutional principle of a state under the rule of law would be deviated from and the constitutional right of a person to the due court process would be violated (rulings of 21 September 2006 and 24 October 2007); the said correction of mistakes made by courts of lower instance and the related prevention of injustice is the *conditio sine qua non* for the trust of parties to the respective proceedings and society in general not only in the court of general jurisdiction that considers the respective case, but also in the whole system of courts of general jurisdiction (ruling of 28 March 2006).

... the purpose of the institution of filing an appeal against a final act of a court of first instance is not only the defence and protection of the rights of a person (convict) who has been brought to legal responsibility, but also the defence and protection of the rights and legitimate interests of other persons, *inter alia*, a victim, as well as the defence and protection of the public interest and the legal order of the state.

Facts established by a court decision are *res judicata*

The Constitutional Court's ruling of 13 May 2010

Facts established by an effective court decision are *res judicata* and ... they are not proved anew.

The principle of the public consideration of cases in a court (Paragraph 1 of Article 117 of the Constitution)

The Constitutional Court's ruling of 6 December 2012

Paragraph 1 of Article 117 of the Constitution prescribes: "In all courts, the consideration of cases shall be public. A closed court hearing may be held in order to protect the secrecy of private or family life, or where the public consideration of the case might disclose a state, professional, or commercial secret."

Paragraph 1 of Article 117 of the Constitution consolidates the principle of the public consideration of cases in courts, stipulates that a closed court hearing may be held in certain circumstances, and provides for a list of such circumstances (ruling of 19 September 2000).

[...]

... the provision "in all courts" of Paragraph 1 of Article 117 of the Constitution embraces the courts of all systems, the courts of all levels, and the courts of all instances.

[...]

The principle of the public consideration of cases in a court, as consolidated in Paragraph 1 of Article 117 of the Constitution, the interest of the public to be informed, which stems from the Constitution (*inter alia*, from Article 25 thereof), Paragraph 5 of Article 25 of the Constitution, under which citizens have the right to receive, according to the procedure established by law, any information held about them by state institutions, as well as the constitutional principle of a state under the rule of law, *inter alia*, the requirement for legal clarity, imply the duty of the legislature to regulate, by means of a law, the relationships of the consideration of cases in a court in such a way that would create the conditions both for the participants of proceedings and for the public, *inter alia*, to be aware of cases considered in courts, the composition of courts considering cases, disputes resolved in such cases, and the adopted decisions.

It needs to be noted that, under the Constitution, the public consideration of cases is not an objective in itself. The public consideration of cases is one of the conditions for administering and ensuring justice. The public consideration of cases in a court creates the preconditions for ensuring the implementation of

the law expressed in the Constitution, in laws, and in other legal acts, for guaranteeing the supremacy of law, and for protecting the rights and freedoms of persons. While ensuring the principle of the public consideration of cases in a court, the legislature is obliged to pay regard to the norms and other principles of the Constitution and not to create the preconditions for violating the values (*inter alia*, the rights and freedoms of persons) that are consolidated, defended, and protected by the Constitution.

[...]

It also needs to be noted that the principle of the public consideration of cases in a court is not absolute. Paragraph 1 of Article 117 of the Constitution, in which the said principle is consolidated, provides both for certain exceptions to the publicity of the consideration of cases and for situations where a closed court hearing may be held: in order to protect the secrecy of private or family life, or where the public consideration of a case may disclose a state, professional, or commercial secret. Thus, under Paragraph 1 of Article 117 of the Constitution, the publicity of proceedings is limited for the purposes of protecting the private or public interest. The principle of the public consideration of cases in a court may also be limited by means of a law with a view to protecting other constitutional values. For instance, the principle of the independence of judges and courts, which is consolidated, *inter alia*, in Article 109 of the Constitution, gives rise to the requirement for the secrecy of deliberation by judges when adopting a decision. In addition, in order to protect human dignity, the inviolability of private life (Article 22 of the Constitution), and other values, the protection of which stems from the Constitution, it is permitted to limit, by means of a law, the publicity of separate elements of the process of the consideration of cases, *inter alia*, the public pronouncement of a final act of a court, and the publicity of the material of a case.

The constitutional principle of the public consideration of cases in a court likewise determines the publicity of a court hearing in which a case is considered. With a view to ensuring the publicity of a court hearing as an element of the consideration of cases in a court, the legislature must regulate the procedure for court hearings in order that the conditions are created to ensure the right of the participants of proceedings to express their opinion on all the issues that are decided in the respective case, as well as the interest of the public to be informed about court proceedings and about the adopted decisions. Paragraph 1 of Article 117 of the Constitution and other norms of the Constitution give rise to the duty of the legislature to establish such forms of a court hearing that would create the conditions for ensuring the implementation of the right of the participants of proceedings to public court proceedings, as well as the interest of the public to be informed; at the same time, the aforesaid forms of a court hearing may not create any preconditions for violating the values (*inter alia*, the rights and freedoms of a person) consolidated, defended, and protected by the Constitution.

The administration of justice in criminal cases (Paragraph 1 of Article 109 of the Constitution)

The Constitutional Court's ruling of 15 November 2013

... in criminal procedure law, the provision of Paragraph 1 of Article 109 of the Constitution that justice is administered only by courts, *inter alia*, means that, during a trial, a court of first instance, while performing this function, must thoroughly, fully, and objectively investigate all circumstances of a criminal case and decide such a case on its merits. ... courts and judges, in the course of the administration of justice, are not bound by evidence obtained during the pretrial investigation of a case: the constitutional obligation of a court is a comprehensive, thorough, and objective investigation into all material of a case and the adoption of a just decision (*inter alia*, the rulings of 5 February 1999 and 8 May 2000).

[...]

Under Paragraph 1 of Article 109 of the Constitution and the constitutional principles of a state under the rule of law and justice, courts have the duty not only to investigate all circumstances of criminal cases in an exhaustive and impartial manner, but also to correctly apply criminal laws, *inter alia*, to properly classify a criminal act committed by the accused person. A court must investigate whether a criminal act specified in the indictment was committed in the substantial circumstances specified precisely in the said indictment with the exception of the situations where the prosecutor, the private prosecutor, or the victim

submit the request that the factual circumstances specified in the indictment be changed to circumstances that are different in substance. ...

... under the Constitution, *inter alia*, Paragraph 2 of Article 31 and Paragraph 1 of Article 109 thereof, and under the constitutional principles of a state under the rule of law and justice, the possibilities must be created for a court considering a criminal case to change, on its own initiative, the factual circumstances specified in the indictment to circumstances that are different in substance. While implementing this right, a court must inform the accused and other participants of the court trial about such a possibility, must ensure the right to be informed about the accusation, the right to defence, and the implementation of other constitutional principles of the due process of law.

The administration of justice in criminal cases (Paragraph 1 of Article 109 of the Constitution); the correction of mistakes made by courts of lower instance in establishing and assessing legally significant facts

The Constitutional Court's ruling of 26 June 2017

Paragraph 1 of Article 109 of the Constitution prescribes: "In the Republic of Lithuania, justice shall be administered only by courts."

When interpreting Article 109 of the Constitution, the Constitutional Court has held on more than one occasion (*inter alia*, in the rulings of 21 December 1999, 9 May 2006, and 8 May 2014) that, in the course of administering justice, courts must ensure the implementation of the law expressed in the Constitution, laws, and other legal acts, must guarantee the supremacy of law, and must protect human rights and freedoms. The constitutional concept of the administration of justice also implies that courts must decide cases only by strictly adhering to the procedural and other requirements established in laws, without exceeding the limits of their jurisdiction and without exceeding their other powers (*inter alia*, the rulings of 16 January 2006 and 15 November 2013). Paragraph 1 of Article 109 of the Constitution gives rise to the duty of courts to consider cases in a fair and objective manner and to adopt reasoned and well-founded decisions (*inter alia*, the rulings of 15 May 2007, 31 January 2011, and 8 May 2014). The principle of justice consolidated in the Constitution, as well as the provision that justice is administered by courts, means that not the adoption of a decision as such in a court, but, rather, the adoption of a just court decision, constitutes a constitutional value; the constitutional concept of justice implies not perfunctory and nominal justice administered by a court, not an outward appearance of justice administered by a court, but such court decisions (other final court acts) that are not unjust by their content; justice administered by a court only in a perfunctory manner is not the justice that is consolidated, protected, and defended by the Constitution (*inter alia*, the rulings of 21 September 2006, 25 September 2012, and 8 May 2014).

The Constitutional Court has noted in its jurisprudence on more than one occasion that it is not allowed to establish such a legal regulation that would prevent a court from adopting a just decision in a case and, thus, from implementing justice where the court takes into account all significant circumstances of the case, follows law, and does not violate the imperatives of justice and reasonableness stemming from the Constitution; otherwise, the powers of a court to administer justice, which stem, *inter alia*, from Paragraph 1 of Article 109 of the Constitution, would be limited or even denied, and the constitutional concept of courts as the institutions administering justice in the name of the Republic of Lithuania, as well as the constitutional principles of a state under the rule of law and justice, would be deviated from (*inter alia*, the rulings of 21 September 2006 and 6 December 2013).

The Constitutional Court held in its ruling of 16 January 2006 that the necessity to protect the rights and legitimate interests of a person, also the fact that a court is a state institution that, when administering justice, helps the state to ensure the security of a person and all society against criminal attempts, determine certain powers of a court in criminal proceedings; in criminal proceedings, a court must also be an impartial arbiter, which objectively assesses the data (evidence) in a criminal case regarding the circumstances of committing a criminal act and adopts a fair decision concerning the guilt of a person accused of having committed the criminal act; at the same time, in order to establish the truth, a court must take an active part in criminal proceedings: a court must define the limits of the consideration of a criminal case, must perform

certain procedural actions, must ensure that persons participating in court proceedings do not abuse their rights or powers, and must resolve other issues related to the consideration of a criminal case before the court; while considering a criminal case, a court must act in such a way that the truth is established in the criminal case and the question of the guilt of a person accused of having committed a criminal act is fairly resolved. Under Paragraph 1 of Article 109 of the Constitution and the constitutional principles of a state under the rule of law and the right to the due court process, courts have the duty not only to investigate all circumstances of criminal cases in an exhaustive and impartial manner, but also to correctly apply criminal laws, *inter alia*, to properly qualify a criminal act committed by the accused (ruling of 15 November 2013).

[...]

... in view of the fact that such situations are possible where a court considering a criminal case under the appeal procedure, having examined new evidence or evidence already examined by the court of first instance, in cases where an assessment of the said evidence could lead to the conclusion that the factual circumstances are essentially different from those established by the court of first instance and that this could result in the worsening of the situation of the convicted or acquitted person, or the situation of the person against whom the case has been dismissed, is restricted ... by the legal principles of criminal procedure [*non reformatio in peius* (under which, while considering a case following an appeal of a convicted or acquitted person, or a person against whom the case has been dismissed, the court is prohibited from worsening the legal situation of the appellant) and *tantum devolutum quantum appellatum* (under which the court must verify and assess the lawfulness and reasonableness of only that part of the decision of the court of first instance regarding which the appeal has been filed)] and cannot itself correct the mistakes made by the court of first instance in establishing and/or assessing legally significant facts, it should be noted in the context of the constitutional justice case at issue that the powers of courts to administer justice, stemming from the Constitution, *inter alia*, Paragraph 1 of Article 109 thereof, imply that a law must establish the powers of the court of appeal instance to refer in such a situation the case back to the court of first instance for reconsideration.

[...]

... under the Constitution, a court has the duty not only to investigate all the circumstances of a case that would allow the court to adopt a fair and reasonable decision, but also to deliver this decision within the shortest possible time. The said duty implies that, having investigated and assessed evidence leading to the conclusion that the factual circumstances essentially differ from the circumstances established by the court of first instance, the court considering the criminal case under the appeal procedure should annul the judgment of the court of first instance and refer the case back to it for reconsideration only in such a case where the situation of the convicted or acquitted person, or the situation of the person against whom the case has been dismissed, could be worsened in substance.

[...]

... the legislature has broad discretion to regulate criminal procedure relationships and may establish various models for considering criminal cases before the court of appeal. However, the legislature may not establish such a legal regulation that would preclude a court of higher instance, having regard to all the circumstances of the case and following law and the imperatives of justice and reasonableness, which stem from the Constitution, from adopting a fair decision in the case and effectively ensuring the constitutional right of the person to proper and fair criminal proceedings.

Therefore, in order to ensure the right of a person to a trial within the shortest possible time, as well as to the adoption of a fair and reasonable court decision based on the circumstances of the case, and to the rights of defence, and having regard to the chosen model of the consideration of criminal cases in a court of appeal instance, the legislature can also establish other ways to remove, in the courts of higher instance, any mistakes that may be made due to some reasons by a court of lower instance in establishing and assessing legally significant facts; *inter alia*, the legislature can provide for the right of a prosecutor, private prosecutor, victim, or civil claimant to file (or supplement) an appeal in cases where, upon investigating and assessing the evidence in the court of appeal instance, the conclusion could be reached that the factual circumstances are essentially different from those established by the court of first instance and this can

result in the worsening of the situation of the convicted or acquitted person, or the situation of the person against whom the case has been dismissed.

At the same time, it needs to be noted that ... the right of a person to a well-founded (reasoned) decision is an integral part of the constitutional right to a fair trial, which implies the need for a higher court, *inter alia*, a court of appeal instance, to have all procedural possibilities of adequately examining the received appeals and adopting just and well-founded (reasoned) decisions; in addition, correcting mistakes made by courts of lower instance and the related prevention of injustice is a necessary precondition for guaranteeing and encouraging trust in the judicial system by parties to a case and society in general.

The execution of effective court decisions

The Constitutional Court's ruling of 25 November 2019

... effective court decisions are binding on all institutions of state power and governance and all legal and natural persons (decision of 13 November 1997 and the ruling of 24 September 1998). By adopting and executing court decisions in the state, justice is implemented, the stability of the legal relationships established and confirmed by effective court decisions is guaranteed, and the trust of the subjects of law in the state authorities and laws is strengthened (decision of 13 November 1997). The facts established by an effective court decision are *res judicata* and they are not proved anew (ruling of 13 May 2010). Consequently, under the Constitution, *inter alia*, Article 109 thereof, according to which only courts administer justice, as well as under the constitutional principles of justice and a state under the rule of law, failure to execute effective court decisions in the absence of constitutionally justifiable grounds cannot be tolerated.

9.2. THE PROSECUTION SERVICE

The constitutional status of prosecutors (Article 118 (wording of 20 March 2003) of the Constitution)

The Constitutional Court's ruling of 13 May 2004

Under the Constitution, the prosecution service of the Republic of Lithuania is a centralised state institution with specific authoritative powers; it is not categorised as belonging to the institutions that are indicated in Paragraph 1 of Article 5 of the Constitution, which execute state power. The prosecution service of the Republic of Lithuania is not a constituent part of judicial power.

Article 118 of the Constitution consolidates the functions of prosecutors: a pretrial investigation is organised and directed, and charges on behalf of the state in criminal cases are upheld by prosecutors (Paragraph 1); in cases established by law, prosecutors defend the rights and legitimate interests of the person, society, and the state (Paragraph 2). Paragraph 3 of Article 118 of the Constitution provides that, when performing their functions, prosecutors are independent and obey only the law.

Thus, a prosecutor is a state official that has specific authoritative powers. Under the Constitution, no one else but a prosecutor may organise a pretrial investigation and be in charge of it; also, under the Constitution, no one else but a prosecutor may uphold charges on behalf of the state in criminal cases. At the same time, it needs to be noted that, under the Constitution, the functions of a prosecutor are different from the administration of justice.

A pretrial investigation

The Constitutional Court's ruling of 16 January 2006

... the institutions of a pretrial investigation and of upholding charges on behalf of the state in criminal cases, which are consolidated in the Constitution, imply such a general constitutional model of criminal procedure according to which a pretrial investigation and the consideration of criminal cases in a court are different stages in criminal procedure.

... during a pretrial investigation, the necessary information is collected and assessed in order to decide whether the pretrial investigation must be continued and whether, after it has been completed, the respective criminal case must be referred to a court; in addition, the said information is collected and assessed in order to consider a case referred to a court and to decide it in a fair manner.

While regulating, by means of a law, a pretrial investigation and conducting such an investigation, it is necessary to follow the norms and principles of the Constitution, which, *inter alia*, consolidate the equality of the rights of persons, the inviolability of freedom of an individual, the prohibition on degrading human dignity, the inviolability of the human person, the inviolability of private life, the inviolability of the home of a human being, the presumption of innocence, the right of a person to judicial protection, and the right to an advocate.

A pretrial investigation must be carried out objectively, in a qualified manner, impartially, and comprehensively and such amount of information must be collected during this investigation that would be sufficient in order to decide a criminal case in a court in a fair manner.

A pretrial investigation may not be such that its deficiencies would hinder a court in its efforts to justly decide the issue of the guilt of a person in committing a criminal act. The legislature, while paying regard to the Constitution, must establish such a legal regulation whereby, in cases where a pretrial investigation is performed in a non-qualified manner, not comprehensively, or has other faults, it would be possible to carry out a pretrial investigation (or its separate actions) repeatedly.

It needs to be especially emphasised that decisions adopted during a pretrial investigation must be clear and based on legal arguments. The clarity of these decisions and the substantiation of such decisions with legal arguments is an important guarantee of the constitutional rights and freedoms of a person, *inter alia*, the right to fair legal proceedings, as well as the right to judicial protection.

Under the Constitution, it is impermissible to establish any such a legal regulation that would preclude the possibility of filing a complaint with a court against decisions adopted during a pretrial investigation.

... in itself, the constitutional consolidation of the ... general model of criminal procedure does not remove the possibility of regulating criminal procedure relationships in such a manner that, in certain cases (especially when account is taken of the nature, dangerousness (gravity), scale, other features of criminal acts, as well as other important circumstances), a pretrial investigation is not conducted. However, the legislature, when consolidating such a legal regulation whereby a pretrial investigation is not conducted when criminal cases of individual categories are investigated may not create any legal preconditions for burdening the administration of justice or for violating the interests of a person and society from the aspect that the right of a person and of all society, which arises from the Constitution, to security from criminal attempts is denied. In such a case, the legislature is under the duty to provide for other legal measures ensuring the possibility of collecting all information necessary in order to adopt a just court decision. ... the legislature, while regulating criminal procedure relationships, under the Constitution, is not permitted to consolidate any such a legal regulation that would prevent carrying out a pretrial investigation or separate procedural actions in order to establish the person who is suspected of committing a criminal act or the circumstances of committing such an act if it is impossible to achieve this without carrying out a pretrial investigation or performing certain procedural actions. Otherwise, the imperatives of the protection of a person and all society from criminal attempts and the right of a person to the due process of law, which arise from the constitutional principle of a state under the rule of law, would be disregarded.

Under the Constitution, a pretrial investigation is organised and directed by prosecutors.

The function of prosecutors to organise and direct a pretrial investigation (Paragraph 1 of Article 118 (wording of 20 March 2003) of the Constitution)

The Constitutional Court's ruling of 16 January 2006

Under the Constitution, no one else but prosecutors may organise and direct a pretrial investigation (ruling of 13 May 2004). The provision of Paragraph 1 of Article 118 of the Constitution, whereby a pretrial investigation is organised and directed by prosecutors, obliges the legislature to establish the powers of prosecutors in organising and directing a pretrial investigation. While regulating this, the

legislature has rather broad discretion: taking account of the nature, dangerousness (gravity), scale, and other features of criminal acts, as well as of other important circumstances, the legislature may establish various forms of the organisation and direction of a pretrial investigation, certain powers of prosecutors in this procedure, etc. However, in this case, the legislature is bound by the norms and principles of the Constitution, *inter alia*, by the obligation, stemming from the Constitution, to ensure the security of each person and all society against criminal attempts. The said provision of Paragraph 1 of Article 118 of the Constitution gives rise to the duty of prosecutors to organise and direct a pretrial investigation in such a manner that objective and comprehensive information would be collected about a criminal act and a person who is suspected of committing this act, which, *inter alia*, would create the legal preconditions for a court to establish the objective truth in a criminal case and adopt a just decision concerning the guilt of a person accused of committing a criminal act.

The function of prosecutors to uphold charges on behalf of the state in criminal cases (Paragraph 1 of Article 118 (wording of 20 March 2003) of the Constitution)

The Constitutional Court's ruling of 16 January 2006

Under the Constitution, no one else but prosecutors may uphold charges on behalf of the state in criminal cases (ruling of 13 May 2004). ... the provision of Paragraph 1 of Article 118 of the Constitution, whereby prosecutors uphold charges on behalf of the state in criminal cases, *inter alia*, means that, in the course of criminal procedure, charges on behalf of the state are upheld in a court and that upholding criminal charges on behalf of the state is a function of the state that can be implemented only through certain officials – prosecutors. However, the said provision of the Constitution does not prevent the legislature, when it takes account of whose interests have been violated, of the nature, dangerousness (gravity), scale, and other features of criminal acts, the will of a victim, as well as of other circumstances of importance, etc., from establishing such a legal regulation whereby, in certain cases provided for by means of a law, charges on behalf of the state are not upheld during the consideration of the case in a court. However, every case where it is stipulated that charges on behalf of the state are not upheld must be constitutionally justifiable, *inter alia*, no preconditions may be created that would unreasonably burden the implementation of the constitutional rights and freedoms of a person or deny them altogether. Thus, under the Constitution, the legislature may establish such a legal regulation whereby private persons (their representatives), but not prosecutors, uphold charges in certain criminal cases; in itself, such a legal regulation does not create any preconditions for violating the rights of a person to judicial protection. However, there may not be any such legal situations in which a prosecutor would not have the duty to uphold charges on behalf of the state in cases where private persons (their representatives), when upholding charges in a criminal case, are not able to efficiently defend their rights and legitimate interests (or those of the persons they are representing).

The independence of prosecutors

The Constitutional Court's ruling of 16 January 2006

The Constitutional Court has noted that the independence of prosecutors in organising a pretrial investigation and being in charge of it, as well as in upholding charges on behalf of the state in criminal cases, is a constitutional value; under the Constitution, it is not permitted to establish any such a legal regulation whereby this constitutional value would be denied or the independence of prosecutors would otherwise be restricted when they organise a pretrial investigation and direct it and when they uphold charges on behalf of the state in criminal cases (ruling of 13 May 2004). However, the independence of prosecutors, as consolidated in the Constitution, may not be interpreted as meaning that, during criminal proceedings, prosecutors are not obliged to follow laws and/or the instructions of a court (judge).

The function of prosecutors to defend the rights and legitimate interests of the person, society, and the state (Paragraph 2 of Article 118 (wording of 20 March 2003) of the Constitution)

The Constitutional Court's ruling of 16 January 2006

... the provision of Paragraph 2 of Article 118 of the Constitution, under which, in cases established by law, prosecutors defend the rights and legitimate interests of the person, society, and the state, gives rise to the duty of the legislature to establish such situations where prosecutors must defend the rights and legitimate interests of persons, society, and the state. Also, such legal situations are possible where the rights and legitimate interests of persons, society, and the state are defended without the participation of a prosecutor. However, under the Constitution, there may not be any such legal situations where a person whose rights and legitimate interests have been or are violated, as well as if attempts are made to violate them, would not be able to defend his/her rights in courts, or with the assistance of prosecutors, or by means of any other legal instruments. Thus, the Constitution, *inter alia*, Paragraph 2 of Article 118 thereof, implies the duty of the legislature to establish such a legal regulation whereby, in all cases where the rights or legitimate interests of persons, society, or the state are violated, or where attempts are made to violate them, the efficient defence and protection of such rights and legitimate interests, *inter alia*, against criminal attempts, would be ensured.

... the provisions of Paragraphs 1 and 2 of Article 118 of the Constitution imply that a prosecutor, when defending the rights and legitimate interests of persons, society, and the state, must organise a pretrial investigation and direct it, as well as uphold charges on behalf of the state in criminal cases. Under the Constitution, the legislature has the duty to establish, by means of a law, such a legal regulation whereby prosecutors and the prosecution service of the Republic of Lithuania would be able to efficiently implement this constitutional obligation.

The prohibition precluding prosecutors from participating in the activity of political parties (Paragraph 3 of Article 118 (wording of 20 March 2003) of the Constitution)

The Constitutional Court's ruling of 14 April 2006

... the provision of Paragraph 3 of Article 118 of the Constitution, according to which, when performing their functions, prosecutors are independent and obey only the law, also implies the prohibition precluding prosecutors from being members of political parties and political organisations and from participating in their activities ...

The independence of prosecutors (Paragraph 3 of Article 118 (wording of 20 March 2003) of the Constitution)

The Constitutional Court's decision of 16 January 2014

... Paragraph 3 of Article 118 (wording of 20 March 2003) of the Constitution consolidates *expressis verbis* the principle of the independence of prosecutors. Under the Constitution, prosecutors, when performing their functions, are independent and obey only the law. Consequently, prosecutors, while performing their functions, act independently and the institutions of legislative power and executive power, *inter alia*, the Seimas and the President of the Republic, who participate in the process of appointing and releasing the Prosecutor General, may not interfere with the performance of the functions of prosecutors, give prosecutors any obligatory instructions as to the performance of their functions, or control the work of prosecutors while they are performing their functions.

[...]

Thus, under the Constitution, it is not permitted to establish any such a legal regulation that would deny or restrict the independence of prosecutors in organising and directing a pretrial investigation, in upholding charges on behalf of the state in criminal cases, or in defending the rights and legitimate interests of persons, society, and the state.

[...]

Consequently, under the Constitution, the Seimas is not permitted to establish any such a legal regulation that would oblige prosecutors to submit the accounts of the performance of their constitutional functions to legislative power or executive power, *inter alia*, any such a legal regulation that would oblige the Prosecutor General to submit the said accounts of the activity of the prosecution service of the Republic of Lithuania, which would subsequently need to be approved by the Seimas, the President of the Republic,

or the Government. The establishment of the aforesaid duty would mean interference with the activities of prosecutors, who perform the functions provided for in the Constitution, and the restriction of the independence of prosecutors in performing the functions provided for in the Constitution.

... the constitutional requirement that the power of the State of Lithuania should be organised in a democratic way and that the democratic political regime must be in place in the country is inseparable from the provision of Paragraph 3 of Article 5 of the Constitution, whereby state institutions serve the people, as well as from the provision of Paragraph 2 of the same article, whereby the scope of powers is limited by the Constitution.

The principle of the balance of the values consolidated in the Constitution and the duty of the legislature to reconcile different interests and to ensure the balance of constitutional values oblige the legislature to bring the constitutional provision that state institutions serve the people in line with the constitutional principle of the independence of prosecutors. Bringing in line these constitutional values would be ensured if the Prosecutor General were obliged, by means of a law, to submit to society, as well as the Seimas and the President of the Republic, who participate in the process of the appointment and release of the Prosecutor General, information (public reports) about the implementation of the priorities of the penal policy, the defence of the public interest, the organisation of the work of the prosecution service, the directions of the activity of the prosecution service, the organisation of cooperation between the Lithuanian and foreign establishments of pretrial investigation or other institutions, time limits for the investigation of criminal acts, certain problems arising in the course of the work of the prosecution service, etc.

The independence of prosecutors; submitting information about the activity of the prosecution service to the Seimas (Paragraph 3 of Article 118 (wording of 20 March 2003) of the Constitution)

The Constitutional Court's ruling of 30 December 2015

... under the Constitution, when implementing the possibility implied by the Constitution to regulate, by means of a law, the regular obtaining of information from a state institution (except for courts), *inter alia*, in the form of reports, which is significant for the implementation of its functions, the Seimas may establish that the Prosecutor General regularly, under the general procedure, submits information on the activity of the prosecution service, *inter alia*, an annual activity report, to the Seimas; however, it may not establish such a legal regulation under which the Prosecutor General would be obliged to provide the Seimas or the President of the Republic with information not on the summarised aspects of the activity of the prosecution service as a whole, but specifically on the fact how prosecutors of the Office of the Prosecutor General and those of territorial prosecutor's offices implement their constitutional functions.

[...]

Thus, in general, the Constitution permits accounting by the Prosecutor General ... for the activity of the prosecution service, *inter alia*, to the Seimas (which participates in the procedure of the appointment and release of the Prosecutor General); the Constitution also permits such a form of accounting to the Seimas as the annual activity report (its submission) of the prosecution service. However, the implementation (application) of such ... accounting and submission of the annual activity report of the prosecution service ... may not create any preconditions for violating the principle of the independence of prosecutors, which is consolidated in Paragraph 3 of Article 118 (wording of 20 March 2003) of the Constitution.

Releasing the Prosecutor General from his/her duties (Item 11 (wording of 20 March 2003) of Article 84 and Paragraphs 5 and 6 of Article 118 (wording of 20 March 2003) of the Constitution)

The Constitutional Court's ruling of 30 December 2015

Paragraph 5 of Article 118 (wording of 20 March 2003) of the Constitution prescribes that the Prosecutor General is appointed and released by the President of the Republic upon the assent of the Seimas, whereas Paragraph 6 thereof provides that the procedure for the appointment and release of prosecutors, as well as their status, is established by law. In addition, Article 84 of the Constitution

provides, *inter alia*, that the President of the Republic “shall, upon the assent of the Seimas, appoint and release the Prosecutor General of the Republic of Lithuania” (Item 11 (wording of 20 March 2003)).

The Constitutional Court has held that the legislature, while implementing its constitutional powers to establish the entities who appoint and release prosecutors, also to establish the length of the term of the powers of prosecutors, the procedure for their appointment and release from duties, and the grounds for their release from duties, is bound by the Constitution and, thus, also by the principle of a state under the rule of law consolidated therein, which implies legal certainty, stability, and the protection of legitimate expectations; after having established the term of the powers of the Prosecutor General, the legislature does not have the right to provide for any grounds for the release of the Prosecutor General from his/her duties before the expiry of the term of the powers of the Prosecutor General; under the Constitution, the legislature may establish only such grounds for the release of the Prosecutor General from his/her duties before the expiry of his/her powers due to which the Prosecutor General may not hold his/her office on the whole (e.g. due to such legal facts as the age provided for in the law, transference to another place of work, or the loss of citizenship of the Republic of Lithuania) (ruling of 24 January 2003).

It should be noted that, in the aforementioned Constitutional Court’s decision of 16 January 2014, the Constitutional Court also interpreted the provisions of the Constitutional Court’s rulings of 30 March 2000 and 24 January 2003 linked with the legal regulation of the release of prosecutors from their duties.

In its decision of 16 January 2014, the Constitutional Court noted the following:

- Paragraph 6 of Article 118 (wording of 20 March 2003) of the Constitution stipulates that the procedure for the appointment and release of prosecutors and their status are established by means of a law; consequently, under the Constitution, the procedure for the appointment and release of the Prosecutor General may be established exclusively in a law;

- Paragraph 5 of Article 118 (wording of 20 March 2003) of the Constitution provides that the Prosecutor General is appointed and released by the President of the Republic upon the assent of the Seimas; the law establishing the procedure for the appointment and release of the Prosecutor General must provide that the sole subject appointing and releasing the Prosecutor General is the President of the Republic, who may act so upon the assent of the Seimas;

- under Article 76 of the Constitution, the Seimas itself has the right to establish its structure and the procedure for its work; the Seimas, while referring to the Constitution, has the right to decide by itself the questions of the formation of its structural subunits and those of their competence and organisation of their work; no other state institution may interfere with these constitutional powers of the Seimas; consequently, the Statute of the Seimas must establish the procedure under which the Seimas decides on whether or not to give its assent to the proposal of the President of the Republic to appoint or release the Prosecutor General; when establishing, in the Statute of the Seimas, under what procedure the Seimas gives or does not give its assent to the proposal of the President of the Republic to appoint or release the Prosecutor General, the Seimas may not provide for any grounds for the release of the Prosecutor General from duties, since, as mentioned before, the grounds for the release of the Prosecutor General from duties may be established exclusively in a law;

- the Prosecutor General is not an official appointed or elected by the Seimas; the Prosecutor General is appointed to office and released from duties by the President of the Republic upon the assent of the Seimas; consequently, the procedure for dismissing an official upon a motion of no confidence, which is provided for in Article 75 of the Constitution and is related to the assessment of the activity of the official concerned, may not be applied to the Prosecutor General.

In its decision of 16 January 2014, the Constitutional Court [interpreted] that ... the grounds and procedure for the release of the Prosecutor General from duties must be established exclusively in a law; the Statute of the Seimas may establish, *inter alia*, the procedure under which the Seimas adopts a decision on whether or not to give its assent to the proposal of the President of the Republic to appoint or release the Prosecutor General.

[...]

... under the constitutional principle of the independence of prosecutors in performing the functions provided for in the Constitution, which is prescribed in the Constitution, *inter alia*, Paragraph 3 of Article 118 (wording of 20 March 2003) thereof, the legislature is prohibited from establishing such a legal regulation of accounting by the Prosecutor General (*inter alia*, the submission of the annual activity report of the prosecution service) to the Seimas under which a resolution of the Seimas on refusing to approve an annual activity report of the prosecution service would constitute a ground for the Seimas to decide to put forward the proposal to dismiss the Prosecutor General.

At the same time, it should be noted that, in general, under the Constitution, such a legal regulation is possible under which the Seimas, which participates in appointing and releasing the Prosecutor General, could propose that the President of the Republic release the Prosecutor General from his/her duties on the grounds provided for in a law.

10. LOCAL SELF-GOVERNMENT AND GOVERNANCE

10.1. STATE GOVERNANCE AND LOCAL SELF-GOVERNMENT AS TWO SYSTEMS OF PUBLIC POWER

The territorial administrative units of the State of Lithuania (Article 11 and Chapter X of the Constitution)

The Constitutional Court's ruling of 18 February 1998

Article 10 of the Constitution states that the territory of the State of Lithuania is integral and is not divided into any state-like formations. It is this provision that contains the constitutional consolidation of the unitary state system and expresses the idea of the united and indivisible state.

However, for reasons of organising governance in a rational manner, the territories of all states, including those of unitary ones, have their own internal structure, i.e. they are divided into certain administrative units where the respective state institutions are formed. This is also provided for in Article 11 of the Constitution: "The territorial administrative units of the State of Lithuania and their boundaries shall be established by law." It is worth noting that these constitutional norms are specified and further developed by the norms of Chapter X entitled "Local Self-Government and Governance". First, the said chapter establishes not less than two levels of administrative units. Second, different systems of governance are established for administrative units of different levels: the Constitution guarantees the right of self-government for lower-level (i.e. first-level) units, while governance is organised by the Government at higher-level (i.e. second-level) administrative units.

The principle of balancing the interests of municipalities and those of the state

The Constitutional Court's ruling of 18 February 1998

... self-government implies certain freedom and autonomy of activities, as well as independence from state power institutions. Such freedom, however, is not limitless, while autonomy does not mean that it is allowed to ignore state interests. Therefore, the principle of balancing the interests of municipalities and those of the state is of utmost importance. In certain cases, this is expressed by the state in supporting municipalities in various ways and forms; in other cases, joint actions are coordinated when significant social objectives are sought; or, in still other cases, the state supervises municipal activities in the form prescribed by means of a law.

It should be noted that, in Lithuania, the self-government model is based on the centuries-old European tradition of the culture of self-government, which was later supplemented with the institution of administrative supervision that was formed on the basis of local (regional) state governance.

State governance and local self-government as two systems of public power; the principle of balancing the interests of municipalities and those of the state

The Constitutional Court's ruling of 24 December 2002

... the constitutional foundations of local self-government are established in Chapter X of the Constitution, which is entitled "Local Self-Government and Governance", as well as in other provisions of the Constitution.

When interpreting, in a systemic manner, the said provisions of the Constitution and the provisions thereof in which the constitutional grounds for the functioning of state power are established, it becomes clear that the Constitution distinguishes two systems of public power: state governance and local self-government.

Under Article 11 and Item 17 of Article 67 of the Constitution, the Seimas establishes, by means of a law, the territorial administrative units of the State of Lithuania and their boundaries. At higher-level administrative units, governance is organised by the Government according to the procedure established by law (Paragraph 1 of Article 123 of the Constitution); while the right to self-government is guaranteed to the administrative territorial units of the state, which are provided for by law (Paragraph 1 of Article 119 of the Constitution). ...

[...]

Local self-government is the power of the territorial communities of administrative units provided for by law; such power of territorial communities is formed and functions on the constitutional grounds that are different from those of state power. The Constitution does not identify self-government with state governance (ruling of 14 January 2002). State governance and local self-government, as two systems of the implementation of public power, are related; however, each of the said systems implements the functions that are characteristic of it alone.

[...]

As such, the fact that the Constitution does not identify local self-government with state governance does not mean that there is no interaction between state governance and local self-government.

It has been mentioned that Paragraph 1 of Article 119 of the Constitution provides that the right to self-government is guaranteed to the administrative territorial units of the state, which are provided for by law. Paragraph 1 of Article 123 of the Constitution provides that, at higher-level administrative units, governance is organised by the Government according to the procedure established by law. The observance of the Constitution and laws and the execution of the decisions of the Government by municipalities are supervised by the representatives appointed by the Government (Paragraph 2 of Article 123 of the Constitution). Paragraph 4 of Article 123 of the Constitution provides that, in cases and according to the procedure provided for by law, the Seimas may temporarily introduce direct rule in the territory of a municipality.

It also needs to be noted that, under Paragraph 1 of Article 120 of the Constitution, the state supports municipalities.

Thus, centralised state governance in administrative territorial units is combined with decentralisation by consolidating, by means of laws, cooperation between central state institutions and municipalities (ruling of 22 October 1996). The principle of balancing the interests of municipalities and those of the state manifests itself not only in the fact that the state supports municipalities in various ways and forms or in the fact that the state supervises, in the forms prescribed by law, the activities of municipalities, but also in the coordination of joint actions where important social objectives are sought (ruling of 18 February 1998).

It needs to be noted that, when defining, by means of a law, the competence of municipalities and organising state governance in the territory of a municipality, regard must be paid to the constitutional principles of freedom and independence of the activities of municipalities within their competence defined by the Constitution and laws, as well as to the principles of balancing the interests of municipalities and those of the state. Therefore, it is not permitted to create opposition between, on the one hand, the principle of balancing the interests of municipalities and those of the state, which is consolidated in the Constitution, and, on the other hand, the constitutional principles of freedom and independence of the activities of municipalities within their competence defined by the Constitution and laws.

It has been mentioned that the Constitution does not identify local self-government with state governance. State governance is implemented through state power establishments and other state institutions indicated in the Constitution and laws. The right of self-government is implemented through self-government institutions – municipal councils; municipal councils form bodies that are accountable to them. The constitutional principles upon which the organisation of state power and the organisation of self-government are based overlap only in part.

State governance and local self-government as two systems of public power; interaction between state governance and local self-government

The Constitutional Court's ruling of 8 July 2005

The Constitutional Court, when interpreting Paragraph 2 of Article 120 of the Constitution in the context of other provisions of the Constitution (*inter alia*, those that consolidate the constitutional concept of local self-government), has held in its rulings that state governance and local self-government are two systems of public power, which are established in the Constitution. They are not identical. In the Constitution, local self-government is consolidated as a local system of public administration, which functions, within the competence defined in the Constitution and laws, on discretionary grounds and is not under direct jurisdiction of institutions of state power, i.e. local self-government is consolidated as the self-administration and discretion of the territorial communities of administrative units established in laws. Local self-government is the power of the territorial communities of administrative units, which is formed and functions on the constitutional grounds that are different from those of state power. Each aforementioned system of public power performs its own specific functions. On the other hand, a self-governing territorial community constitutes part of the entire national community – the civil Nation; therefore, it is not allowed to create opposition between the public interest of municipalities – territorial communities and the public interest of the entire national community, which must be guaranteed by state institutions within their competence. There is interaction between state governance and local self-government, which manifests itself, *inter alia*, in the following ways: centralised state governance in territorial administrative units is combined with decentralisation; laws consolidate cooperation between the institutions of central power and municipalities; the state supports municipalities in various ways and forms; and the state supervises (in forms defined by means of laws) the activity of municipalities and coordinates the joint actions of the state and municipalities when important social objectives are sought (rulings of 18 February 1998, 13 June 2000, 28 June 2001, 14 January 2002, 24 December 2002, 30 May 2003, and 13 December 2004).

10.2. LOCAL SELF-GOVERNMENT

The constitutional foundations of local self-government*The Constitutional Court's ruling of 24 December 2002*

The constitutional foundations of local self-government are established in Chapter X of the Constitution, which is entitled “Local Self-Government and Governance”, as well as in other provisions of the Constitution.

When interpreting the concept of local self-government, which is established in the Constitution, it needs to be noted that, under Paragraph 1 of Article 119 of the Constitution, the right to self-government is guaranteed to the administrative territorial units of the state, which are provided for by law, and this right is implemented through the respective municipal councils; under Paragraph 2 (wording of 20 June 2002) of the same article, the members of municipal councils are elected for a four-year term, as provided for by law, from among the citizens of the Republic of Lithuania and other permanent residents of the respective administrative units by the citizens of the Republic of Lithuania and other permanent residents of these administrative units on the basis of universal, equal, and direct suffrage by secret ballot; under Paragraph 3 of the same article, the procedure for the organisation and activities of self-government institutions are established by law; under Paragraph 4 of the same article, for the direct implementation of the laws of the Republic of Lithuania, as well as the decisions of the Government and the municipal council, the municipal council forms executive bodies accountable to it.

Various aspects of the constitutional concept of self-government are established not only in Article 119 of the Constitution, but also in the provisions of other articles of the Constitution: the provision of Article 11, whereby the territorial administrative units of the State of Lithuania and their boundaries are established by law; the provision of Item 17 of Article 67, whereby the Seimas establishes the administrative division of the Republic; the provision of Paragraph 1 of Article 120, whereby the state supports municipalities; the provision of Paragraph 2 of the same article, whereby municipalities act freely

and independently within their competence defined by the Constitution and laws; the provision of Paragraph 1 of Article 121, whereby municipalities draft and approve their budgets; the provision of Paragraph 2 of the same article, whereby municipal councils have the right, within the limits and according to the procedure provided for by law, to establish local levies and may provide for tax and levy concessions at the expense of their own budgets; the provision of Article 122, whereby municipal councils have the right to apply to a court regarding the violation of their rights; the provision of Paragraph 2 of Article 123, whereby the observance of the Constitution and laws and the execution of the decisions of the Government by municipalities are supervised by the representatives appointed by the Government; the provision of Paragraph 3 of the same article, whereby the powers of the representatives of the Government and the procedure for the execution of their powers are established by law; the provision of Paragraph 4 of the same article, whereby, in cases and according to the procedure provided for by law, the Seimas may temporarily introduce direct rule in the territory of a municipality; the provision of Article 124, whereby the acts or actions of municipal councils or of their executive bodies or officials that violate the rights of citizens or organisations may be appealed against before a court; the provision of Paragraph 1 of Article 127, whereby the budgetary system of the Republic of Lithuania consists of the independent state budget of the Republic of Lithuania and independent municipal budgets; the provision of Article 141, whereby persons performing actual military service or alternative service, as well as the officers of the national defence system, the police, and the interior, non-commissioned officers, re-enlistees, and other paid officials of paramilitary and security services who are not retired to the reserve, may not be members of municipal councils, etc.

The concept of local self-government

The Constitutional Court's ruling of 24 December 2002

... Under the Constitution, local self-government is self-administration and discretion exercised, within their competence defined by the Constitution and laws, by the communities (i.e. territorial or local communities) of the state administrative units provided for by law, where such territorial communities are composed of permanent residents of the said units (citizens of the Republic of Lithuania and other permanent residents). The said territorial communities are the subject of the right to self-government and are referred to in the Constitution as municipalities (or local municipalities).

Thus, a municipality is the territorial community of an administrative unit of the state, which is provided for by means of a law; such a community has the right to self-government, which is guaranteed by the Constitution. In its ruling of 18 February 1998, the Constitutional Court held that the Constitution consolidates local self-government as a local system of public administration, which operates on discretionary grounds and is not directly subordinate to state power institutions. The system of municipalities is decentralised.

The freedom and independence of the activities of municipalities (Paragraph 2 of Article 120 of the Constitution)

The Constitutional Court's ruling of 24 December 2002

The provision of the Constitution that municipalities act freely and independently within their competence defined by the Constitution and laws should be regarded as a guarantee for the participation of these local communities in governing these territories (ruling of 28 June 2001).

[...]

The independence of municipalities and freedom of their activities within their competence defined by the Constitution and laws are constitutional principles. In its ruling of 13 June 2000, the Constitutional Court held that the norm of Paragraph 2 of Article 120 of the Constitution that municipalities act freely and independently may not be dissociated from the provision established in the same paragraph of the same article that the freedom and independence of municipalities are bound by the competence defined by the Constitution and laws.

Paragraph 2 of Article 120 of the Constitution provides that municipalities act freely and independently within their competence defined by the Constitution and laws. Under the Constitution, it is

not permitted to establish any such a legal regulation whereby the possibility for municipalities to realise their competence directly established in the Constitution would be denied.

The constitutional provision that municipalities act freely and independently within their competence defined by the Constitution and laws also means that, if certain functions are assigned to municipalities by the Constitution or laws, municipalities perform such functions within the assigned limits. This means that a certain part of the competence of municipalities must be implemented directly and that the implementation of decisions adopted by municipal councils within the limits of their competence must not be bound by decisions (permissions, consents, etc.) of certain state institutions or officials. However, it needs to be emphasised that even the functions that exclusively belong to municipalities are regulated by means of a law. None of these functions mean that municipalities are absolutely independent in a certain area.

Funds allocated to municipalities for the fulfilment of the functions transferred to municipalities by the state

The Constitutional Court's ruling of 24 December 2002

In addition to the functions that belong exclusively to municipalities, they may be assigned to perform certain state functions; thus, more effective interaction between state power and citizens, as well as the democracy of governance, is ensured. In fulfilling these functions, the activities of municipalities are bound by the respective decisions of state power institutions and/or officials. Under the Constitution, such state functions must be transferred to municipalities by law.

In its ruling of 14 January 2002, while interpreting the provision of Paragraph 2 of Article 120 of the Constitution, whereby municipalities act freely and independently within their competence defined by the Constitution and laws, together with the provision of Paragraph 1 of Article 121 of the Constitution, under which municipalities draft and approve their budgets, and the provision of Paragraph 1 of Article 127 of the Constitution, whereby the budgetary system of the Republic of Lithuania consists of the independent state budget of the Republic of Lithuania and independent municipal budgets, the Constitutional Court held that the constitutional independence of the activities of municipalities within the limits of their competence defined in the Constitution and laws implies that, if state functions are transferred by law to municipalities, or if they are given duties by means of laws or other legal acts, funds must be provided for the implementation of these functions (duties); in addition, if, before the end of a budget year, additional state functions are transferred (duties are established) to municipalities, funds must also be allocated for this purpose. Under the Constitution, municipalities must execute laws, thus, including the laws by which municipalities are obligated to perform the state functions that are transferred to them. Municipalities would be unable to perform such duties unless their performance is guaranteed by financial means. Funds allocated to municipalities in order to fulfil the functions transferred to municipalities by the state must be provided for in the law on the state budget. The constitutional independence of the activities of municipalities within their competence defined by the Constitution and laws and the constitutionally prescribed support of the state for municipalities, as well as balancing the interests of municipalities and those of the state, imply that funds (municipal revenues and their sources) must be provided for in the state budget, necessary for ensuring the fully fledged functioning of self-government and for implementing the functions of municipalities.

The concept of a municipality

The Constitutional Court's ruling of 24 December 2002

It has been mentioned that the Constitution names the territorial communities of state administrative units (territorial communities) as municipalities (or local municipalities). On the other hand, the right of self-government is inseparable from the institutions through which the said right is implemented and/or from the organisation and the activities of the institutions that are accountable to them.

Therefore, it is not a **coincidence** that the Constitution employs the notion of a municipality not only in the sense of the territorial community of an administrative unit, but also in the sense of local self-government institutions and/or the institutions that are accountable to them (e.g. Paragraph 1 of Article 73, Paragraph 2 of Article 120, Paragraph 1 of Article 121, and Paragraph 2 of Article 123).

Municipal councils (Article 119 of the Constitution)

The Constitutional Court's ruling of 24 December 2002

Municipal councils as self-government institutions are directly provided for in the Constitution; the Constitution does not indicate any other self-government institutions. ... the notion “self-government institutions” expresses the constitutional mission of the respective institutions of the territorial communities of administrative units: they are institutions through which the right of self-government of the respective communities is implemented.

The implementation of the right of self-government is impossible without democratic representation. As self-government institutions, municipal councils are representative institutions. When forming municipal councils, regard must be paid to the principles of the election of municipal council members, which are established in Paragraph 2 of Article 119 of the Constitution, as well as to other requirements of the Constitution.

The active and passive electoral rights of the permanent residents of an administrative unit in the elections of municipal councils (Paragraph 2 (wording of 20 June 2002) of Article 119 of the Constitution)

The Constitutional Court's ruling of 24 December 2002

Under Paragraph 2 of Article 119 of the Constitution, the members of municipal councils are elected by the citizens of the Republic of Lithuania and other permanent residents of these administrative units on the basis of universal, equal, and direct suffrage by secret ballot; the same paragraph also provides that the members of municipal councils are elected as provided for by law. Thus, the legislature has the constitutional competence to regulate, by means of a law, the procedure for the elections of municipal council members. The discretion of the legislature in regulating the procedure for the elections of municipal council members is limited by the Constitution.

Paragraph 2 of Article 119 of the Constitution links the active electoral right of persons in the election of the members of municipal councils with the legal fact – the permanent residence of persons in the respective administrative unit. This means that the legislature has the constitutional duty to establish, by means of a law, such a procedure for determining the fact of the permanent residence of a person in the respective administrative unit that would ensure that municipal council members are elected only by persons who could reasonably be deemed permanent residents of the respective administrative units. Otherwise, the constitutional concept of local self-government would be deviated from.

Under Paragraph 2 of Article 119 of the Constitution, citizens of the Republic of Lithuania and other permanent residents of administrative units may stand for election as members of the respective municipal council.

Paragraph 2 of Article 119 of the Constitution links the passive electoral right of persons in the election of the members of municipal councils with the legal fact – the permanent residence of persons in the respective administrative unit. This means that the legislature has the constitutional duty to establish, by means of a law, such a procedure for determining the fact of the permanent residence of a person in the respective administrative unit that would ensure that municipal council members are elected only from persons who could reasonably be deemed permanent residents of the respective administrative units. Otherwise, the constitutional concept of local self-government would be deviated from.

The incompatibility of the office of a member of a municipal council with another office and the principle of the prohibition of a dual mandate

The Constitutional Court's ruling of 24 December 2002

The limitations on the passive electoral right in the election of municipal council members are established in the Constitution.

Under Article 141 of the Constitution, persons performing actual military service or alternative service, as well as the officers of the national defence system, the police, and the interior, non-commissioned officers, re-enlistees, and other paid officials of paramilitary and security services who are not retired to the reserve, may not be members of municipal councils.

[...]

The same persons may not perform the functions in implementing state power and, at the same time, be members of municipal councils, through which the right of self-government is implemented. The Constitution consolidates the principle of the prohibition of a dual mandate. Besides, it needs to be noted that, in order that they might be able to perform the functions prescribed for them in the Constitution in the course of implementing state power, the Constitution provides for a special legal status for the President of the Republic, the members of the Seimas, the members of the Government and judges, which, *inter alia*, includes limitations on work, remuneration, and political activities, as well as a special procedure for removal from office or for the revocation of the mandate and/or immunities, i.e. the inviolability of the person and the special procedure for applying criminal and/or administrative responsibility. Members of municipal councils, under the Constitution, do not enjoy the aforesaid immunities; therefore, under the Constitution, there may not be any such a legal situation where persons who have the said immunities are members of municipal councils. Under the Constitution, members of municipal councils must be equal in their legal status.

Under the Constitution, state officials who, according to the Constitution and laws, have the powers to control or supervise the activities of municipal councils, may not be members of municipal councils, either.

The said requirements of the Constitution do not mean that the aforementioned persons do not have the right to seek to stand for election as members of municipal councils (i.e. this does not mean that they do not have the passive electoral right in the election of members of municipal councils), but that, when there occurs a legal situation where a person indicated in Article 141 of the Constitution or a person performing the functions of state power, or a state official who, under the Constitution and laws, has the powers to control or supervise the activities of municipalities is elected a member of a municipal council, he/she, before the newly elected municipal council convenes to the first sitting, must decide whether to remain in his/her previous office or to be a member of the municipal council.

The executive bodies accountable to municipal councils (Paragraph 4 of Article 119 of the Constitution)

The Constitutional Court's ruling of 24 December 2002

Under the Constitution, decisions adopted by municipal councils are inseparable from the execution of these decisions.

Under Paragraph 4 of Article 119 of the Constitution, for the direct implementation of laws, as well as the decisions of the Government and the municipal council, the municipal council forms executive bodies accountable to it. The formation of such executive bodies is a constitutional duty of municipal councils. Decisions of municipal councils are directly implemented by the executive bodies that are accountable to them and are an inseparable part of the self-government mechanism.

The Constitution does not establish any types of executive bodies (collegial, one-person bodies) that are accountable to municipal councils or the procedure for their formation, their names, and interrelations; the functions and competence of the said bodies are established only in general terms: under Paragraph 4 of Article 119, the executive bodies accountable to municipal councils are formed for the direct implementation of the laws, the decisions of the Government, and those of municipal councils. The functions and competence of the executive bodies accountable to municipal councils are left to be established by the Seimas by means of a law. When regulating, by means of laws, the formation, functions,

and competence of the executive bodies accountable to municipal councils, regard must be paid to the principles of local self-government, which are established in the Constitution: representative democracy, the accountability of executive bodies to the representation, the supremacy of municipal councils over the executive bodies that are accountable to them, etc.

The phrase “the municipal council shall form executive bodies”, which is used in Paragraph 4 of Article 119 of the Constitution, also implies that the legislature has the discretion to establish by means of a law which procedure – an election procedure or a different procedure – must be applied in order to form the said executive bodies, which of the said bodies are collegial bodies and which are one-person bodies, as well as the type of their interrelations. The legislature also has the discretion to establish, by means of a law, the structure of collegial executive bodies and the number of their members, or to leave it, under the law, to be established by municipal councils.

The principle of the accountability of executive bodies to the representation also implies that the executive bodies accountable to municipal councils must be formed for the term of office of the municipal council.

It needs to be noted that the executive bodies indicated in Paragraph 4 of Article 119 of the Constitution are institutions that are established for the direct implementation of laws, the decisions of the Government, and those of the municipal council. The said executive bodies are not the internal structural units (subunits) of municipal councils that have to ensure the work of municipal councils.

It has been mentioned that the Constitution consolidates the principle of the supremacy of municipal councils over the executive bodies that are accountable to them. Municipal councils have the powers to control the executive bodies that are formed by municipal councils and are accountable to them.

Thus, under the Constitution, the executive bodies accountable to municipal councils may not be formed from among the members of the municipal councils that establish the said bodies.

It has also been mentioned that, under the Constitution, decisions adopted by municipal councils are inseparable from the execution of these decisions and the executive bodies that are accountable to municipal councils are an inseparable part of the self-government mechanism. It needs to be noted that it is clear from the provisions of Article 141 of the Constitution and other provisions of the Constitution that military, paramilitary, and security services are separated from civil service. Thus, the persons specified in Article 141 of the Constitution, i.e. persons performing actual military service or alternative service, as well as the officers of the national defence system, the police, and the interior, non-commissioned officers, re-enlistees, and other paid officials of paramilitary and security services who are not retired to the reserve, may be neither members of municipal councils nor officials or employees of the executive bodies that are established by municipal councils and are accountable to them.

Under the Constitution, persons who perform the functions of the implementation of state power, as well as state officials who, according to the Constitution and laws, have the powers to control or supervise the activities of municipal councils, may not be officials or employees of the aforesaid executive bodies, either.

It needs to be emphasised that executive bodies that are accountable to municipal councils may not be treated as ones through which the right of self-government is implemented by territorial communities, i.e. as self-government institutions, since, under Paragraph 1 of Article 119 of the Constitution, the right of self-government is implemented through municipal councils. It has been mentioned that municipal councils have the constitutional competence to control the said executive bodies. Therefore, the said executive bodies may not replace municipal councils, or bring municipal councils under their control, or dictate them. The powers of the executive bodies may not be dominant with respect to the powers of municipal councils. It is not permitted to establish any such a legal regulation whereby executive bodies accountable to municipal councils would be equated to the municipal councils that have formed them, let alone such a legal regulation whereby the powers of the executive bodies established by municipal councils and accountable to them would restrict the powers of municipal councils, or whereby municipal councils would lose the possibility of exercising control over the executive bodies established by municipal councils and accountable to them.

The provision of Paragraph 4 of Article 119 of the Constitution, according to which, for the direct implementation of the laws of the Republic of Lithuania, as well as the decisions of the Government and the municipal council, the municipal council forms executive bodies accountable to it, also means that all decisions of the said executive bodies must be based on laws, as well as on decisions of the Government and/or those of the respective municipal councils. Under the Constitution, the executive bodies accountable to municipal councils do not have the right to adopt such decisions that are not based on laws, decisions of the Government, and/or the respective municipal councils; the said bodies also may not adopt such decisions the legal force of which would be equated to that of decisions passed by municipal councils.

It has been mentioned that the Constitution consolidates the principle of the supremacy of municipal councils over the executive bodies that are accountable to them. Consequently, under the Constitution, it is not permitted to establish any such a legal regulation whereby decisions on the issues categorised *expressis verbis* by the Constitution as belonging to municipalities would be adopted not by municipal councils, but by the executive bodies established by municipal councils and accountable to them.

[...]

It has been held in this ruling of the Constitutional Court that the functions and competence of the executive bodies accountable to municipal councils are left to be established by the Seimas by means of a law. However, as mentioned before, the principles of the accountability of executive bodies to the representation and of the supremacy of municipal councils over the executive bodies that are accountable to them, both of which are established in the Constitution, imply that municipal councils have the powers to control the executive bodies that are established by municipal councils and are accountable to them. Under the Constitution, the right of self-government is implemented through municipal councils; thus, all decisions adopted by the executive bodies accountable to municipal councils on the issues assigned to the competence of municipalities are subordinated to decisions of the respective municipal councils.

[...]

... When establishing, by means of a law, the competence of executive bodies accountable to municipal councils, it is necessary to observe the following provisions of the constitutional concept of local self-government: a municipal council is a municipal representative institution; a municipal council is superior over the executive bodies that are formed by it and are accountable to it; the executive bodies are formed for the realisation of the interests of municipalities, the direct implementation of laws, decisions of the Government, and those of municipal councils; municipal councils have the powers to control the executive bodies that are formed by municipal councils and are accountable to them.

The exclusive constitutional competence of municipal councils (Paragraph 1 of Article 40, Paragraph 2 of Article 41, Paragraph 4 of Article 119, Paragraphs 1 and 2 of Article 121, and Article 122 of the Constitution)

The Constitutional Court's ruling of 24 December 2002

... the competence of municipalities is *expressis verbis* defined in the following articles of the Constitution: Paragraph 1 of Article 40, which, *inter alia*, indicates municipal establishments of teaching and education; Paragraph 2 of Article 41, which, *inter alia*, indicates municipal schools of general education, vocational schools, and schools of further education ... Paragraph 4 of Article 119, which provides that, for the direct implementation of the laws of the Republic of Lithuania, as well as the decisions of the Government and the municipal council, the municipal council forms executive bodies accountable to it; Paragraph 1 of Article 121, which provides that municipalities draft and approve their own budgets; Paragraph 2 of Article 121, which provides that municipal councils have the right, within the limits and according to the procedure provided for by means of a law, to establish local levies and that municipal councils may provide for tax and levy concessions at the expense of their own budgets; Article 122, which provides that municipal councils have the right to apply to a court regarding the violation of their rights.

The adoption of the decisions on the municipal issues indicated in Paragraph 1 of Article 40, Paragraph 2 of Article 41, Paragraph 2 of Article 47, Paragraph 4 of Article 119, Paragraphs 1 and 2 of Article 121, and Article 122 of the Constitution is the exclusive constitutional competence of municipal

councils. Under the Constitution, it is not permitted to establish any such a legal regulation that would create the legal preconditions for the executive bodies accountable to municipal councils to interfere with the exclusive constitutional competence of municipal councils in the adoption of decisions on the issues specified in Paragraph 1 of Article 40, Paragraph 2 of Article 41, Paragraph 2 of Article 47, Paragraph 4 of Article 119, Paragraphs 1 and 2 of Article 121, and Article 122 of the Constitution.

The incompatibility of the office of a member of a municipal council with the office of a state official who has the powers to control and supervise the activities of municipalities

The Constitutional Court's decision of 11 February 2004

... the statement “state officials who ... have the powers to control or supervise the activities of municipalities may not be members of municipal councils” ... of the Constitutional Court’s ruling of 24 December 2002 means, *inter alia*, that state officials (servants and other persons irrespective of how they are referred to in laws) who, under the Constitution and laws, have the powers to adopt decisions upon which the adoption and implementation of the decisions of municipal councils within their competence defined by the Constitution and laws depend may not be municipal council members at the same time; this statement does not mean that state officials who have the powers to conduct only organisational, technical, etc. control or supervision over the executive bodies accountable to municipal councils, as well as over municipal establishments or enterprises, may not be municipal council members at the same time.

Establishing municipal functions and the competence of municipal institutions

The Constitutional Court's decision of 11 February 2004

Under the Constitution, municipal functions and competence may be established only by means of a law.

It needs to be noted that certain competence of municipal councils is *expressis verbis* established in the Constitution itself. Decisions on these issues may be adopted only by municipal councils. This is the exclusive constitutional competence of municipal councils because: (1) the legislature may not stipulate that decisions on these issues are adopted not by municipal councils, but by the executive bodies accountable to them or by other municipal institutions; (2) municipal councils themselves may transfer the right to adopt such decisions neither to the executive bodies accountable to municipal councils nor to any other municipal institutions, while the legislature may not establish any such a legal regulation under which municipal councils would be permitted to transfer the right to adopt such decisions to the executive bodies accountable to municipal councils or other municipal institutions.

It was held in the Constitutional Court’s ruling of 24 December 2002 that the functions and competence of the executive bodies accountable to municipal councils are left to be established by the Seimas by means of a law. Thus, as regards the issues whereby the competence of municipal councils is not *expressis verbis* established in the Constitution (where such issues do not fall under the exceptional constitutional competence of municipal councils), the legislature, under the Constitution, has the powers to stipulate which decisions fall under the competence of municipal councils and which decisions are within the competence of the executive bodies accountable to municipal councils or other municipal institutions. In cases where laws provide that certain decisions are adopted by municipal councils, municipal councils may transfer the right to adopt such decisions neither to the executive bodies accountable to municipal councils nor to other municipal institutions. However, the legislature, under the Constitution, may also establish, by means of a law, such a legal regulation under which certain decisions are adopted by municipal councils, but municipal councils may transfer the right to adopt such decisions to the executive bodies accountable to them; however, in such cases, the following conditions must be met: (1) the powers of municipal councils to transfer the right to adopt certain decisions to the executive bodies accountable to municipal councils must be established *expressis verbis* in a law; (2) the said powers may not be transferred to such municipal institutions that, according to the law, are not executive bodies accountable to municipal councils. Still, in other cases, the legislature may, by means of a law, directly stipulate which decisions are adopted by executive bodies accountable to municipal councils.

[...]

... under the Constitution, a legal regulation established by means of a law where such a legal regulation provides that, in certain cases, municipal councils may transfer the right to adopt certain decisions to the executive bodies accountable to municipal councils may not be such that would create the preconditions for a legal situation in which the executive bodies accountable to municipal councils would replace municipal councils, or would subordinate such councils to them, or would make such bodies equal to municipal councils, or would impose the will of such bodies on municipal councils, or would make the powers of the executive bodies dominant over those of municipal councils; the said legal regulation may not be such whereby the powers of municipal councils would be restricted by those of the executive bodies established by them and accountable to them or whereby municipal councils would lose the possibility of controlling these executive bodies. If such a legal regulation were adopted, it would also violate the principle of the supremacy of municipal councils over the executive bodies that are accountable to them, which is consolidated in the Constitution and stated in the Constitutional Court's ruling of 24 December 2002; such a legal regulation would also distort both the constitutional concept of local self-government and the essence of the self-government rights of territorial communities, which implement the said rights through municipal councils.

The incompatibility of the office of a member of a municipal council with the office of the heads or officials of the establishments or enterprises that are accountable to the municipal council

The Constitutional Court's decision of 13 February 2004

Municipalities act freely and independently within their competence defined by the Constitution and laws (Paragraph 2 of Article 120 of the Constitution).

When implementing the right of self-government guaranteed by the Constitution, municipal councils, under the laws, may found municipal institutions, establishments, and enterprises.

In its decision of 11 February 2004, the Constitutional Court held that the legislature has the discretion to stipulate, by means of a law, who (whether municipal councils or executive bodies accountable to them) has the right to adopt decisions concerning the appointment of the heads of municipal establishments and enterprises, and concerning the supervision of these establishments and enterprises: the legislature has the right to stipulate that these decisions are adopted by municipal councils, or that they are adopted by executive bodies accountable to municipal councils, or that these decisions are adopted by municipal councils, or that municipal councils may transfer the right to adopt such decisions to the executive bodies accountable to municipal councils; in such a case, the powers of municipal councils to transfer the said rights to the executive bodies accountable to municipal councils must be directly indicated in a law. After a law establishes the powers of municipal councils to adopt decisions concerning the transfer of supervision over municipal establishments and enterprises to the executive bodies accountable to municipal councils, the right of municipal councils to supervise these establishments and enterprises may not be denied.

If laws provide that heads or officials of municipal establishments and enterprises are accountable to municipal councils for the activities of their or other establishments and enterprises, such heads or officials may not be members of the said municipal councils at the same time. Otherwise, the right of municipal councils (as the representation of territorial communities) to supervise the activity of the establishments and enterprises (their heads and officials) that are accountable to them would be distorted, since this would give rise to a legal situation where the heads or officials of the establishments and enterprises accountable to municipal councils would supervise themselves (their own activity) and would be accountable to themselves.

The freedom and independence of the activities of municipalities (Paragraph 2 of Article 120 of the Constitution); functions performed by municipalities

The Constitutional Court's ruling of 8 July 2005

... the content of the ... provision of Paragraph 2 of Article 120 of the Constitution, under which municipalities act freely and independently within their competence defined by the Constitution and laws,

may not be interpreted separately from other provisions of the Constitution that consolidate the constitutional concept of local self-government, *inter alia*, the constitutional foundations of the functioning of local self-government as a system of public power and the constitutional foundations of relationships between local self-government and state governance. The majority of these provisions are set out in Chapter X “Local Self-government and Governance” of the Constitution (Articles 119–124).

In its ruling of 24 December 2002, the Constitutional Court held that, under the Constitution, certain functions are vested exceptionally in municipalities (respective competence of municipalities is directly provided for in the Constitution); moreover, municipalities may also be assigned by means of laws with the performance of certain state functions. In this regard, the concept “functions of municipalities” is a generalising one; it comprises all functions performed by municipalities according to the Constitution and laws, including those that are performed by municipalities due to the fact that, under the Constitution, these functions are assigned exceptionally to them, and those the performance of which, under the Constitution, must be guaranteed by the state, but which are performed, under laws, by municipalities or with certain participation of municipalities for which (to their institutions or officials) the respective competence (powers) is (are) established. Thus, when deciding in constitutional justice cases whether such a legal regulation that is established by means of laws and under which the performance of certain functions is transferred to municipalities is in conflict with Paragraph 2 of Article 120 of the Constitution, and whether such a legal regulation that is established by means of laws and/or substatutory legal acts of the Government and under which municipalities (their institutions or officials) are vested with certain competence (powers) required in order to perform certain functions transferred to municipalities under laws is in conflict with Paragraph 2 of Article 120 of the Constitution, account must be taken of those norms and principles of the Constitution that establish the constitutional foundations of the legal regulation of the respective social relationships; in addition, consideration should be given to the interrelations between these norms and principles, on the one hand, and the provisions of the Constitution that consolidate the constitutional concept of local self-government, on the other hand. ...

[...]

In its rulings, the Constitutional Court has held ... more than once that the provision of Paragraph 2 of Article 120 of the Constitution, whereby municipalities act freely and independently within their competence defined by the Constitution and laws, is the guarantee of the participation of local communities in governing the respective territories.

It was mentioned that, under to the Constitution, certain functions are vested exceptionally in municipalities; moreover, it is also allowed to transfer, by law, certain state functions to municipalities. It should be noted that the possibility, which stems from the Constitution, to transfer by law certain state functions to municipalities also means that the aforementioned functions may be assigned by means of a law to municipalities to a full extent or only to a certain extent. In that case, it is especially necessary to stress the requirement, which stems from the Constitution, for the clarity of a legal regulation: a legal regulation that is established by means of a law must be such where it would be clear to what extent municipalities perform a particular function and to what extent the performance of this function is left to the state.

... the performance of certain state functions, speaking objectively, must, at least to a certain extent, be transferred to municipalities, as, without doing so, it would be impossible to guarantee the effective performance of such functions.

It should be stressed that, under the Constitution, the functions of municipalities may be established only by means of a law; this may not be done by means of a substatutory legal act.

In the area regarding the legal regulation of local self-government relationships, the legislature has broad discretion. This discretion comprises not only the right of the legislature to stipulate by means of a law which functions (to a full extent or to a certain extent) are transferred to municipalities, but also to differentiate these functions, *inter alia*, according to freedom of decision making and, on this basis, to set the types of the functions that are transferred to municipalities. The level of the independence of municipalities when performing various functions that are established by means of laws may differ: when

performing some functions, municipalities may have more independence; whereas, when performing certain other functions, freedom of the activities of municipalities is restricted by the respective decisions of state institutions and/or officials (ruling of 24 December 2002).

It should also be stressed that, when establishing the functions of municipalities and their types, the legislature must pay regard to the independence of municipalities and freedom of their activity within their competence defined by the Constitution and laws, to the principles of balancing the interests of municipalities and those of the state, as well as to the constitutional concept of local self-government.

In this context, mention should be made of the fact that, as held by the Constitutional Court in its rulings of 24 December 2002 and 13 December 2004, the constitutional provision that municipalities act freely and independently within their competence defined by the Constitution and laws also means that, provided that certain functions are assigned to municipalities by the Constitution or laws, then, to the extent that such functions are assigned to them, municipalities perform them (both the ones that are performed by them due to the fact that these functions, under the Constitution, are assigned exceptionally to municipalities and the ones the performance of which, according to the Constitution, must be guaranteed by the state; however, in order to guarantee, *inter alia*, more effective interaction between state power and citizens, as well as the democracy of governance, all of such functions or some of them to a certain extent are transferred by law to municipalities). However, none of these functions mean absolute independence of municipalities in a particular area; all such functions are regulated by means of a law.

The Constitutional Court has held that self-government institutions may be assigned only such functions that the said institutions would be able to perform (ruling of 14 January 2002) and that, if certain state functions are delegated to municipalities by means of laws or if laws and other legal acts create certain duties for municipalities, it is also necessary to allocate funds required for performing these functions (duties) (ruling of 24 December 2002). It was held in the Constitutional Court's rulings of 14 January 2002, 24 December 2002, and 13 December 2003 that, according to the Constitution, municipalities must execute laws, including the laws by which municipalities are obliged to perform state functions that are assigned to them, and that funds required in order to ensure the fully fledged functioning of self-government and the performance of municipal functions must be provided for in the state budget. It should be held that the Constitution (*inter alia*, the provision of Paragraph 1 of Article 120 of the Constitution, according to which the state supports municipalities) gives rise to the duty of the legislature to establish, by means of laws, such a legal regulation where funding to municipal functions would be ensured by taking account of the resources and material and financial capacity of the state and society, as well as other important factors. On the other hand, the constitutional duty of the legislature to establish such a legal regulation where funding for municipal functions would be ensured by taking account of the resources, material and financial capacity of the state and society, as well as other important factors, does not deny the duty of municipalities (their institutions or officials), within the competence defined by the Constitution or laws, to adopt the respective decisions so that the funds needed for performing their functions would be collected and these funds would be used in a proper manner; the aforesaid constitutional duty of the legislature does not deny the responsibility of municipalities (their institutions or officials) to properly carry out the functions transferred to them. In this context, it should be mentioned that, according to the Constitution, municipalities draft and approve their budgets (Paragraph 1 of Article 121 of the Constitution), municipal budgets are independent (Paragraph 1 of Article 127), municipal councils have the right, within the limits and according to the procedure provided for by means of a law, to establish local levies, and municipal councils may provide for tax and levy concessions at the expense of their own budgets (Paragraph 2 of Article 121 of the Constitution).

It should be noted that, according to the Constitution, there may be no such legal regulation where, having established certain functions of municipalities by means of a law, municipal institutions, and/or officials through which these functions should be performed would have no respective competence (powers). Otherwise, it would have to be stated that the functions that were transferred to municipalities by means of a law are the ones that municipalities are not able to perform.

The public interest that must also be guaranteed by local self-government as one of the systems of public power provided for in the Constitution, as well as particular tasks that are faced within a particular period by all society, the state, and territorial communities, is dynamic and subject to change. Therefore, the legislature may and, in certain cases, even must, by means of a law, change (expand, narrow, or modify otherwise) the scope and content of functions that are transferred to municipalities; it must transfer new functions that were not performed previously to municipalities and/or must stipulate that municipalities cease to perform certain functions that were performed before; the legislature may and, in certain cases, even must also correspondingly modify the competence (powers) of municipalities (their institutions or officials) needed in order to perform the functions transferred to municipalities. In doing so, the legislature must pay regard to the norms and principles of the Constitution, *inter alia*, the imperative, which stems from the Constitution, to establish, by means of a law, such a legal regulation where funding for municipal functions would be ensured by taking account of the resources and material and financial capacity of the state and society, as well as other important factors; moreover, if the scope of functions transferred to municipalities is changed (expanded, narrowed, or modified otherwise), the legislature may and, in certain cases, even must correspondingly modify (increase or reduce) the funding for municipal functions. It should be noted in this context that, as already held in the Constitutional Court's rulings of 14 January 2002, 24 December 2002, and 13 December 2004, if additional state functions are transferred (other duties are assigned) to municipalities prior to the end of the budgetary year, funds must also be allocated for the performance of the said functions (duties).

It should especially be stressed that, under the Constitution, it is allowed only by means of a law to change (expand, narrow, or modify otherwise) the scope and content of functions that are transferred to municipalities, to transfer new functions that were not performed previously to municipalities, and/or to stipulate that municipalities cease to perform certain functions that were performed before; this may not be done by means of a substatutory legal act.

Municipal institutions

The Constitutional Court's ruling of 8 July 2005

Municipalities perform all their functions (both the ones that are performed by them due to the fact that these functions, under the Constitution, are assigned exceptionally to municipalities and the ones the performance of which, according to the Constitution, must be guaranteed by the state; however, in order to guarantee, *inter alia*, more effective interaction between state power and citizens, as well as the democracy of governance, all of such functions or some of them to a certain extent are transferred by law to municipalities) and implement their competence (powers) through self-government institutions – municipal councils – the members of which have the mandate of territorial community, through executive bodies that are founded by and accountable to municipal councils, and through other institutions accountable to municipal councils (municipal establishments or enterprises). In its rulings of 24 December 2002, 17 March 2003, and 13 December 2004, the Constitutional Court held that municipal institutions are established in order to realise municipal interests and to directly implement laws, resolutions of the Government, and decisions of the municipal council; thus, under the Constitution, municipal councils, executive bodies that are accountable to them, and other institutions established by municipal councils should also be considered municipal institutions. The concept “municipal institutions” expresses the subordination of the respective institutions to a certain municipality.

In this context, it should be mentioned that the Constitution directly consolidates the grounds and procedure for forming (electing) self-government institutions – municipal councils (Paragraph 2 of Article 119 of the Constitution); moreover, the Constitution *expressis verbis* requires that municipal councils form executive bodies accountable to them (Paragraph 4 of Article 119 of the Constitution). In its ruling of 13 December 2004, the Constitutional Court held that, in cases under the Constitution and laws, municipal councils (representative institutions) and executive bodies accountable to them (executive institutions) are granted authoritative powers and that such municipal institutions are institutions of municipal authority and public administration.

It should be stressed that, under the Constitution, municipal councils, i.e. institutions through which the right of self-government of territorial communities is implemented, have the right to found various institutions accountable to them – municipal establishments, enterprises – that are needed in order to perform functions transferred to municipalities, whereas in cases provided for by means of a law they must found such institutions (municipal establishments or enterprises). Paragraph 2 of Article 120 of the Constitution, wherein it is established that municipalities act freely and independently within their competence defined by the Constitution and laws, and Paragraph 3 of Article 119 of the Constitution, wherein it is established, *inter alia*, that the procedure for the organisation and activities of self-government institutions is established by law, also imply that the legislature has the duty to lay down, by means of a law, the procedure for founding municipal establishments or enterprises, whereas municipal councils must found municipal establishments or enterprises according to the requirements set in laws.

... the legislature, while paying regard to the Constitution, may establish, by means of a law, certain conditions and/or procedures that must be followed by municipalities when implementing their rights of the founder of the establishments or enterprises founded by them; it is also allowed to establish, by means of a law, other limitations that, to a certain extent, restrict the rights of municipalities as founders of certain establishments or enterprises.

Transferring the function of supporting and protecting culture to municipalities

The Constitutional Court's ruling of 8 July 2005

It has been mentioned that certain state functions may also be transferred by law to municipalities, and that the legislature has wide discretion to stipulate, by means of a law, which functions (all or some of them to a certain extent) are assigned to municipalities. It has also been mentioned that the performance of certain state functions, speaking objectively, must, at least to a certain extent, be transferred to municipalities as, without doing so, it would be impossible to guarantee the effective performance of such functions.

... the support and protection of culture is precisely such a state function. The fact that the aforementioned state function must be transferred, at least to a certain extent, to municipalities is caused by the nature of both this function and local self-government as the self-administration and discretion, within the competence defined in the Constitution and laws, of the territorial communities of administrative units provided for in laws. The spread of culture is, first of all, its spread in the closest environment, in territorial surroundings among those who live in a particular area on whose territory certain cultural objects are located; access to culturally valuable objects implies, first of all, their accessibility to the members and residents of the respective community on whose territory particular cultural objects are located; cultural establishments (museums, theatres, libraries, concert organisations, etc.) function in certain administrative territorial units, localities; cultural monuments and other objects of culture are also located on certain territories; the local authorities (their institutions or officials) that administer such territories may not avoid the respective obligations related to the maintenance of these monuments, the ensuring of their accessibility, etc.; creators are also members of territorial communities; associations of creators function in particular administrative territorial units, thus, state support to creators and their associations may be rational and efficient only if account is taken of the local conditions in which creators act and their associations function, etc. Moreover, the state support and development of culture as a constitutionally protected and defended value would be impossible if culture were not developed in regions, separate parts of the territory of the state, separate self-governing territorial communities, which form part of the entire national community – the civil Nation.

The extent to which the performance of the function of supporting and protecting culture should be transferred to municipalities is subject to the state cultural policy. The legislature has wide discretion in this sphere. However, it must pay regard to the independence of municipalities and freedom of their activity within their competence defined by the Constitution and laws, the principles of balancing the interests of municipalities and those of the state, as well as the constitutional concept of local self-government.

At the same time, it should be noted that the fact that the support and protection of culture as a state function must, to a certain extent, be transferred to municipalities does not mean that the state (its

institutions) may opt out from the performance of this function. ... an interaction exists between state governance and local self-government, which manifests itself, *inter alia*, in the following ways: centralised state governance in territorial administrative units is combined with decentralisation; laws consolidate cooperation between institutions of central power and municipalities; the state supports municipalities in various ways and forms; and the state supervises (in forms defined by means of laws) the activities of municipalities and coordinates the joint actions of the state and municipalities where important social objectives are sought. Thus, under the Constitution, no matter to what extent the performance of the aforementioned function is transferred to municipalities, the state still has the duty to ensure that this function is performed properly.

... under the Constitution, the functions of municipalities may be established only by means of a law; this may not be done by means of a substatutory legal act. In this context, it should also be mentioned that the support and protection of culture is not consolidated *expressis verbis* in the Constitution as a function that is assigned exceptionally to municipalities (respective competence of municipalities is not directly consolidated in the Constitution). Thus, the duty of municipalities to perform (to a certain extent) the function of supporting and protecting culture may be established only by means of a law; it is also allowed to establish the respective competence of municipalities only by means of a law. Such laws are subject to the legal clarity requirements, which stem from the Constitution: the legal regulation established therein must be such where it would be clear to what extent municipalities perform this function and to what extent the performance of this function is left to the state.

Due to the fact that, under the Constitution, it is not allowed to assign to self-government institutions any such functions that they would not be able to perform, the legislature is under the duty to establish, by means of a law, such a legal regulation that, taking into account the resources, material and financial capacity of the state and society, as well as other important factors, would ensure (to a certain extent) the financing (*inter alia*, from the state budget) of the function of supporting and protecting culture when the said function is transferred to municipalities. Municipalities (their institutions or officials), whose councils have the powers, under the Constitution, to draw up and approve independent budgets, also have the duty to adopt decisions within their competence defined by the Constitution and laws so that funds necessary for performing their functions are raised and used in a proper manner; they are responsible for a proper performance of functions transferred to them. However, it should be held that the constitutional consolidation of culture as a national value of universal importance does not permit placing on municipalities alone the burden of providing funds to the institutions that contribute to the development of culture.

[...]

In order to perform (to the established extent) the function of supporting and protecting culture, which is transferred to them, and to implement their competence in this area, municipalities may and, in certain cases, must have particular institutions that contribute to the development of culture (*inter alia*, institutions or enterprises that provide public cultural services), which are founded, reorganised, restructured in any other way, or liquidated by municipalities (their institutions) in line with requirements established in laws.

When paying regard to the Constitution, the legislature may establish, by means of a law, certain conditions and/or procedure that must be followed by municipalities in implementing their rights of the founder of institutions or enterprises (*inter alia*, the establishments or enterprises that provide public cultural services) that are founded by them and contribute to the development of culture; in addition, the legislature may establish, by means of a law, other limitations that restrict to a certain extent the rights of municipalities as the founders of particular establishments or enterprises and ensure that municipalities would properly perform the function of supporting and protecting culture, which is transferred to them (to the established extent).

[...]

The state cultural policy must be dynamic ... its formation and implementation are modified by taking various factors into account. Therefore, the content of the function of supporting and protecting culture, which is transferred to municipalities by means of a law, may be changed by means of a law, and the extent

of the performance of this function, which is assigned to municipalities, may be extended or reduced by means of a law. In the context of the case at issue, it should be held that, in order to ensure the interests of municipalities more efficiently, to better take into consideration the local conditions of the localities in which creators and their associations act, to bring the spread of culture closer to territorial communities, to decentralise the administration of culture, as well as on the basis of other reasons (first of all, expediency), it is allowed to assign municipalities by means of a law with the performance of the function of supporting and protecting culture to a greater extent – the performance of this function (to a certain extent) may be transferred from the national level to the municipal level. At the same time, the reverse process when the performance of the aforementioned functions (to a certain extent) is transferred from the municipal level to the national level is, in general, also possible.

When transferring the performance (to a certain extent) of the function of supporting and protecting culture from the national level to the municipal level, regard must be paid to the constitutional concept of local self-government, the independence of municipalities and freedom of their activity, as entrenched in the Constitution, within their competence defined by the Constitution and laws, the principles of balancing the interests of municipalities and those of the state, and the interests of municipalities; it is not allowed to establish for municipalities any such obligations that they would be unable to fulfil; if necessary, the funding for the functions of certain municipalities must be modified (increased or reduced).

The aforementioned transfer of the performance of the functions (to a certain extent) of the support and protection of culture from the national level to the municipal level may be related to the change in the subordination of certain state institutions (establishments or enterprises) the purpose of which is to take care of the development of culture (*inter alia*, the establishments or enterprises that provide public cultural services), where the administration of such establishments is transferred from the system of state administration to local self-government. When paying regard to the Constitution, the legislature may, by means of a law, establish certain conditions and/or procedure that must be followed by municipalities in implementing their rights of the founder of institutions or enterprises (*inter alia*, the establishments or enterprises that provide public cultural services) that are transferred to them and contribute to the development of culture; in addition, the legislature may, by means of a law, establish other limitations that would restrict to a certain extent the rights of municipalities as the founders of particular establishments or enterprises and that would ensure that municipalities would properly perform the function of supporting and protecting culture, which is transferred to them (to the established extent).

It has been held that the assignment of any state establishment or enterprise to municipality (*inter alia*, the transfer of rights of the founder of this establishment or enterprise) must be based on a law and that this requirement stems from the Constitution. Thus, the change in the subordination of state institutions (establishments or enterprises) the purpose of which is to take care of the development of culture (*inter alia*, the establishments or enterprises that provide public cultural services) must be based on a law; this requirement also stems from the Constitution. The constitutional requirements for legal clarity and legal certainty are applicable to the legal regulation according to which a certain state institution has the powers to issue legal acts on the basis of which the respective state institution (establishment or enterprise) the purpose of which is to take care of the development of culture (*inter alia*, an establishment or enterprise that provides public cultural services) is assigned to a municipality (*inter alia*, the rights of the founder of this establishment or enterprise are transferred): such a legal regulation must make it clear whether the rights of the respective municipality as the holder (sole holder or holder in partnership with other subjects, *inter alia*, state institutions) of the rights of the founder of the respective establishment or enterprise are restricted to any extent or whether no such restrictions have been established; moreover, the said legal regulation must make it clear whether particular establishments or enterprises are financed or supported in any other way by the municipality or by the state (its institutions), whether the burden of financing is divided in any way between the municipality and the state (its institutions), whether the powers of control or supervision over these establishments or enterprises are vested in the municipality (its institutions or officials) or in the state (its institutions or officials), or both in the municipality (its institutions or officials)

and in the state (its institutions or officials), etc. Municipalities must be informed about the upcoming transfer of the aforementioned institutions to them.

... when the respective state institution transfers the cultural establishment or enterprise to the municipal level (*inter alia*, when the rights of the founder are transferred to a municipality), the state may and, in certain cases, must establish, by means of a law, various restrictions applicable to the municipality and such restrictions must be followed by the municipality when exercising the rights of the founder, *inter alia*, when adopting decisions on the reorganisation, liquidation, or any other restructuring of the establishments or enterprises that are transferred to municipalities. In certain cases, if the state establishes no such restrictions applicable to municipalities, the performance of the function of supporting and protecting culture where the said function is transferred to the municipal level would become more difficult or municipalities could even refuse, to a certain extent, the performance of the function of supporting and protecting culture where such their function is set by means of a law. This restriction of the independence of municipalities stems from the Constitution and, as such, should not be considered the disregard of the interests of municipalities; the said restriction, stemming from the Constitution, ensures balancing the interests of municipalities and those of the state.

The discretion of the legislature to choose a system of elections to municipal councils (Article 34 and Paragraphs 2 and 3 of Article 119 of the Constitution)

The Constitutional Court's ruling of 9 February 2007

Paragraph 1 of Article 34 of the Constitution provides that citizens who, on the day of the election, have reached 18 years of age have the electoral right; Paragraph 2 of the same article states that the right to stand for election is established by the Constitution of the Republic of Lithuania and by the election laws. It should be noted that the legislature has very broad discretion when implementing the powers, which arise from Article 34, Paragraphs 2 and 3 of Article 119, and other provisions of the Constitution, to establish a system of elections to municipal councils.

The Constitution does not establish any requirements for the legislature as regards choosing a system of elections to municipal councils. It does not prohibit any changes to the chosen system of elections to municipal councils, either. ... state governance and local self-government, as two systems of public power, are formed and function on different constitutional grounds. Thus, the legislature may establish different systems of elections to the Seimas and to municipal councils. According to the Constitution, the system of elections to municipal councils should not necessarily be designed by following the model of the system of elections to the Seimas.

For example, a law may establish exclusively proportional, or exclusively majoritarian system of elections to municipal councils, or a system which combines both the proportional and majoritarian systems; as such, a proportional electoral system, or a majoritarian electoral system, or a different electoral system, *inter alia*, a mixed electoral system, which combines both the proportional and majoritarian electoral systems, may not be regarded as violating the constitutional principle of direct elections, which demands that members of municipal councils be elected by voters instead of any "intermediary" institutions (electoral colleges, etc.) formed on the basis of the votes cast by voters. In addition, as such, a proportional electoral system, or a majoritarian electoral system, or a different electoral system, *inter alia*, a mixed electoral system, which combines both the proportional and majoritarian electoral systems, may not be regarded as creating the preconditions for violating the requirements of free and democratic elections, universal and equal suffrage, secret ballot, or other standards of elections in a democratic state under the rule of law.

[...]

Whichever electoral system is chosen by the legislature, it must establish such a legal regulation that would ensure at the municipal institutions the democratic representation of permanent residents of the administrative units of the territory of the Republic of Lithuania, the proper implementation of the right of self-government, and the functioning of municipal institutions, and would not create any preconditions for the unpredictability, instability, or non-efficiency of the activity of municipal councils. Otherwise, the

expectations of the voters would be denied and a threat would arise that the constitutional principle of responsible governance will be violated.

The passive electoral right in the elections of municipal councils (requirement that, after the legislature chooses exclusively the proportional system of elections to municipal councils, permanent residents of administrative units must have the possibility of standing for election to municipal councils even where they are included in the lists of candidates that are drawn up by entities other than political parties)

The Constitutional Court's ruling of 9 February 2007

The constitutional concept of local self-government implies the broadest possibilities possible for all members of the respective territorial community to participate in the decision-making process related to the administration of affairs of the particular location (territorial community); thus, the said concept implies the broadest possibilities possible to compete for a mandate in the council of the respective municipality.

Elections, including elections to municipal councils, are a political process. The electoral rights (both active and passive ones) are closely related to the right of citizens of the Republic of Lithuania to participate in the governance of their state, as consolidated in Article 33 of the Constitution, as well as to the right of citizens to freely form political parties, as consolidated in Article 35 of the Constitution, provided that the aims and activities thereof are not contrary to the Constitution and laws. It should be noted that the aims of establishing political parties and their activity are inseparable from seeking public power, thus, as well as from participating in elections to the representative institutions of public power, *inter alia*, municipal councils. Under the Constitution, whichever system of elections to municipal councils (exclusively proportional, or exclusively majoritarian, or such a system which combines certain elements of proportional and majoritarian systems) is chosen by the legislature, it is not allowed to establish any such a legal regulation that would prevent political parties or candidates nominated or supported by them from participating in elections to municipal councils (elections of their members). It has been held in this ruling of the Constitutional Court that, in itself, the proportional system of elections does not create any preconditions for violating the constitutional principle of direct elections, the requirements for free and democratic elections, universal and equal suffrage, secret ballot, or other standards of a democratic state under the rule of law.

Consequently, under the Constitution, such (proportional) system of elections to municipal councils where candidates included in the lists of political parties compete for mandates of members of municipal councils is permissible.

On the other hand, that fact that, under the Constitution, such (proportional) system of elections to municipal councils where candidates included in the lists of political parties compete for mandates of members of municipal councils is permissible does not mean that it is constitutionally justifiable to limit the lists of candidates only to the lists formed by political parties after exclusively proportional system of elections to municipal councils (i.e. a system where individuals not included in the list of candidates may not be nominated as candidates in the elections to municipal councils) is chosen.

[...]

... it needs to be stressed that the ... constitutional guarantee that protects a person from belonging to any political party against his/her will also means that a person may not be directly or indirectly compelled to become related to any political party by any relationships that are other than formal membership.

Thus, the legislature, when regulating, by means of a law, the relationships of elections to municipal councils, is bound by the requirement, which stems from the Constitution, not to establish any such a legal regulation where a person who wishes to use his/her passive electoral right in an election of members of municipal councils would be compelled to seek membership in a political party or to become bound with a certain political party by relationships that are other than those of formal membership.

This implies the necessity to ensure that, if exclusively the proportional system of elections to municipal councils (i.e. a system where individual persons who are not included in the lists of candidates may not be nominated as candidates in elections to municipal councils) is chosen, members of territorial

communities – permanent residents of administrative units of the territory of the Republic of Lithuania (citizens of the Republic of Lithuania and other permanent residents) – should have the possibility of standing for election to the councils of the respective municipalities even without support of any political party while being included as candidates for members of municipal councils in some non-political-party list. Having chosen such (proportional) system of elections to municipal councils, it is necessary to ensure the possibility for the members of territorial communities to implement their passive electoral right by being included in other lists, not only those of political parties (and individually, if the legislature so decides). Such unions (associations) that must have, under the law, the right to draw up the said lists may be formed for the period of particular elections to municipal councils, but they may also operate continuously if this is established by means of a law.

The legislature has broad discretion to establish the requirements that should be met by the said lists drawn up not by political parties, *inter alia*, to stipulate how many persons must be included in such lists, whether anyone should support such lists in order to register them for an election to municipal councils and if so, how many persons must do that, the time when such lists must be submitted for registration, under what procedure this must be done, etc.

... the legislature, when stipulating, by means of a law, that members of territorial communities may exercise their passive electoral right of electing members of municipal councils by being included in non-political-party lists, must pay regard to the obvious circumstance that elections are a political process. Therefore, a legal regulation where not every union (established not for any type of objectives) (*inter alia*, not every association, public organisation, community) is allowed to make a list of candidates for members of municipal councils and submit it for registration for an election to municipal councils would be constitutionally justifiable. In this context, it is worth noting that the Constitution consolidates not only the institution of political parties, but also that of political organisations (Paragraph 3 of Article 35, Paragraph 2 of Article 44, Paragraph 2 of Article 83, Paragraph 2 of Article 113, Paragraph 1 of Article 114, and Article 141 of the Constitution); although the notions “political party” and “political organisation” are close, they are not identical.

The legislature, when paying regard to the Constitution, may also establish, by means of a law, certain criteria related to the territory of activity of unions (which are not political parties) that draw up particular lists and submit them for registration to an election to municipal councils (for example, that the said activity should cover the respective administrative units of the territory of the Republic of Lithuania).

The representatives of the Government; the discretion of the legislature to establish the powers of the representatives of the Government and the requirements for persons who wish to hold the office of a representative of the Government (Paragraphs 2 and 3 of Article 123 of the Constitution)

The Constitutional Court's ruling of 13 August 2007

The duties of the representative of the Government are *expressis verbis* enshrined in the Constitution. Paragraph 2 of Article 123 of the Constitution prescribes that the observance of the Constitution and laws and the execution of the decisions of the Government by municipalities are supervised by the representatives appointed by the Government, and Paragraph 3 of this article prescribes that the powers of the representatives of the Government and the procedure for the execution of their powers are established by means of a law. The Constitutional Court held that, under Article 123 of the Constitution, the representative of the Government is a subject who exercises supervision over municipalities, acts in the name of the Government, and is subordinate to it (ruling of 18 February 1998). The establishment of the powers of the representative of the Government is left for the legislature (of course, in doing so, the legislature must pay regard to the Constitution, *inter alia*, the mission of the constitutional institution of the representatives of the Government and the functions of the representatives of the Government, which are consolidated in the Constitution); in this area, the legislature has broad discretion, it may establish very varied powers of the representative of the Government (ruling of 14 April 2006).

The legislature that has wide discretion to regulate the status and powers of the representative of the Government also has the discretion to establish the general and special requirements for the persons who seek this office.

However, it needs to be emphasised that the legislature not only may, but also must establish such a legal regulation that would permit verifying the reliability – loyalty to the State of Lithuania, reputation, etc. – of those persons who seek to hold office in state service.

In this context, it needs to be noted that the jurisprudence of the Constitutional Court has always been based on the principled position that the government representative must have the confidence of the Government; if the representative of the Government loses the confidence of the Government, he/she may be dismissed from office (ruling of 14 April 2006).

Internal structural subunits of municipal councils (Paragraphs 1 and 4 of Article 119 of the Constitution)

The Constitutional Court's ruling of 31 March 2010

... under the Constitution, *inter alia*, Paragraphs 1 and 4 of Article 119 thereof, municipal councils, when implementing the right of self-government guaranteed by the Constitution, may form their internal structural subunits.

In this context, it needs to be noted that, under the Constitution, internal structural subunits of municipal councils may not be treated as ones through which the right of self-government is implemented by territorial communities; therefore, the legislature, while regulating the relationships of local self-government, is not allowed to establish any such a legal regulation under which internal structural subunits of municipal councils or individual municipal officials would be equated to municipal councils or would replace municipal councils, *inter alia*, in the aspect that they would take over the execution of certain powers assigned to the competence of municipal councils as representations of the residents of particular territories. Internal structural subunits of municipal councils must help to ensure the work of municipal councils by presenting recommendations to municipal councils on the issues assigned to the competence of municipal councils, etc.; however, they may not adopt final decisions on the issues assigned to the competence of municipal councils.

... under the Constitution, internal structural subunits of municipal councils may not be treated as the executive bodies accountable to municipal councils, nor may they be treated as other municipal institutions that are established by municipal councils and have authoritative powers.

The discretion of the legislature to choose the manner of establishing the results of elections to municipal councils and of distributing mandates, as well as to consolidate electoral thresholds

The Constitutional Court's ruling of 11 May 2011

The legislature, when regulating the relationships connected with the elections of municipal council members, has broad discretion to choose the methods for establishing the results of elections to an elective representative institution and for distributing mandates, and to consolidate the so-called election thresholds with respect to subjects implementing the passive electoral right, i.e. to stipulate that they may participate in the distribution of mandates only after polling a certain number of votes that is set by means of a law, where the said number of votes may be expressed as a particular percentage (known in advance) of the votes of the voters participating in an election or as a certain number of votes that is determined after calculating the votes of the voters who have participated in an election to a representative institution; as a rule, an election threshold is established in order to avoid a serious fragmentation into small groups in an elected representative institution and to ensure its stability. However, the said discretion of the legislature is not absolute; the legislature must pay regard to the provisions – norms and principles – of the Constitution, *inter alia*, the constitutional concept of local self-government, as well as the principles of universal, equal, and direct suffrage, which stem from Paragraph 2 of Article 119 of the Constitution. The election threshold set by the legislature for electing a representative institution must not be too high, so that it does not create the preconditions for not reflecting the interests of different voters and for violating their

right to participate in deciding questions of self-government through democratically elected representatives; the fundamental differences of election participants may not be ignored and the same election threshold for essentially different subjects implementing the passive electoral right may not be fixed, as well as a different election threshold for essentially analogous subjects implementing the passive electoral right may not be established, since, otherwise, *inter alia*, the principle of equal suffrage, consolidated in Paragraph 2 of Article 119 of the Constitution, would be violated.

The right of persons to stand for election as members of municipal councils; the right of the electorate to receive significant information about candidates for members of municipal councils, *inter alia*, about the fact that a candidate was found by a court to be guilty of a criminal act (Article 25, Paragraph 2 of Article 34, Paragraphs 2 and 3 of Article 119 of the Constitution)

The Constitutional Court's ruling of 17 November 2011

In interpreting the provisions of Paragraph 2 of Article 34 of the Constitution, the Constitutional Court has held that the right of a person, which is guaranteed by the Constitution, to stand for election as a member of a municipal council under the conditions provided for by means of a law is an important constitutional right of a person (ruling of 11 May 2011); the provision “The right to stand for election shall be established ... by the election laws” of Paragraph 2 of Article 34 of the Constitution means that, under the Constitution, the legislature has the powers to establish in the election laws such requirements (conditions) for a person who may stand for election that are constitutionally justifiable (ruling of 25 May 2004).

It needs to be noted that the right of a person to stand for election as a member of the municipal council under the conditions provided for in the law is also consolidated in Article 119 of the Constitution. Paragraph 2 of Article 119 of the Constitution provides, *inter alia*, that members of municipal councils are elected on the basis of universal, equal, and direct suffrage, whereas the provision of Paragraph 3 of the same article, whereby the procedure for the organisation and activities of self-government institutions are established by means of a law, also means that the legislature is under the duty to lay down, by means of a law, the grounds and procedure for organising elections; the formation of the political representative institutions that are provided for in the Constitution is subject to special requirements; the legislature is under the duty to establish such a legal regulation that would ensure the transparency of the electoral process, which is a necessary precondition for the trust of voters in the representative institution (ruling of 11 May 2011).

Elections, including elections to municipal councils, are a political process. The electoral rights (both active and passive ones) are closely related to the right of citizens of the Republic of Lithuania, entrenched in Article 33 of the Constitution, to participate in the governance of their state (ruling of 9 February 2007), which is implemented, *inter alia*, by participating in forming political representative institutions (ruling of 11 May 2011).

... the provision of Paragraph 2 of Article 34 of the Constitution, whereby the right to stand for election is established by the election laws, the provision consolidated in Paragraph 2 of Article 119 of the Constitution, whereby the members of municipal councils are elected on the basis of universal, equal, and direct suffrage, and the provision consolidated in Paragraph 3 of the same article, whereby the procedure for the organisation and activities of self-government institutions are established by law, give rise to the duty of the legislature to establish, by means of a law, the procedure for elections of municipal councils, *inter alia*, such a procedure that would define what information must be made public to voters by persons seeking to stand for election as members of municipal councils, as well as the concrete requirements how such information must be provided so that voters would be informed in a proper way.

It also needs to be noted that, in order to ensure the right of citizens to participate in the governance of their state, as consolidated in Paragraph 1 of Article 33 of the Constitution, *inter alia*, through democratically elected representatives, the legislature must create the preconditions for reflecting the will of voters, *inter alia*, the preconditions for ensuring the transparency of the electoral process and fair competition among subjects exercising their passive electoral right, as well as the publicity of the information, important to voters, regarding these subjects.

... one of the foundations of an open, just, and harmonious civil society and a state under the rule of law is the constitutional right to receive information, which is consolidated in Article 25 of the Constitution.

The Constitution guarantees and protects the interest of the public to be informed (*inter alia*, the rulings of 8 July 2005, 19 September 2005, 29 September 2005, and 21 December 2006). The constitutional right to receive information is an important precondition for implementing various rights and freedoms of a person, which are consolidated in the Constitution (ruling of 21 December 2006).

Thus, when interpreting the provisions of Paragraph 2 of Article 34 and Paragraph 2 of Article 119 of the Constitution in conjunction with the right of the public to receive information, which is entrenched, *inter alia*, in Article 25 of the Constitution, it needs to be noted that the interest of the public to be informed assumes especial importance in the process of elections to political representative institutions, *inter alia*, elections to municipal councils. During the electoral process, real possibilities must be created for persons implementing the active electoral right, who decide on the eligibility of a candidate to be a member of the municipal council, to receive information about the major facts of such person's life, which may be of significance when representing the interests of voters and handling public affairs. The information about the fact that a person seeking to stand for election as a member of the municipal council by an effective court judgment (decision) was found guilty of a criminal act should also be viewed as information significant to the electorate.

It needs to be noted that, when consolidating the duty of a candidate to make it public if he/she was found by a court to have been guilty of a criminal act, the legislature should set concrete requirements as to how such information must be presented in a proper manner and by not misleading voters, *inter alia*, that a candidate must indicate when, as a result of which precisely criminal act, and by an effective court judgment (decision) of which country he/she was found guilty.

[...]

The fact that the act, as a result of committing which a person had been found guilty by a court, was later, under the criminal laws of the Republic of Lithuania, declared not criminal (was decriminalised) does not mean that such a person may be regarded as having not committed any criminal act in the past. It also needs to be noted that, in cases where a person was found guilty, by a court of a foreign state, of an act that is not and was never regarded as a criminal one under the law of the Republic of Lithuania, or in cases where the fact that persons are held criminally liable for such an act is deemed political persecution, this means that the circumstance that such a person was found guilty of such an act is an important fact of his/her life.

Thus, the information about the fact that persons seeking to stand for election as members of municipal councils were found by a court to have been guilty of the aforementioned criminal acts – even in cases where such acts were later decriminalised, as well as in cases where such acts, as a result of which such persons were found guilty by a court of a foreign state, are not and were never regarded as criminal ones under the law of the Republic of Lithuania, or where the fact that persons are held criminally liable for such acts is deemed political persecution – is important to voters in deciding on the eligibility of the candidates for elective positions, as this gives the possibility of being aware of important facts of the life of the candidates, which may be of significance when representing the interests of voters and handling public affairs. ...

[...]

... when interpreting the provisions of Paragraph 2 of Article 34 of the Constitution, the Constitutional Court has also held that, under the Constitution, in the course of regulating electoral relationships by means of a law, *inter alia*, an equal passive electoral right of all candidates must be ensured ...

[...]

... when fulfilling its duty, which stems from the provisions consolidated in Paragraph 2 of Article 34, Paragraphs 2 and 3 of Article 119 of the Constitution, to lay down, by means of a law, the grounds and procedure for organising elections to municipal councils, the legislature has broad discretion, *inter alia*, to stipulate what information regarding candidates for members of municipal councils must be provided for voters by institutions organising elections and in what way the said information must be presented.

However, this discretion of the legislature is not absolute. When stipulating what information regarding candidates must be provided by institutions organising elections and in what way that information must be presented, the legislature is obliged to ensure the imperatives stemming from the Constitution, *inter alia*, an equal passive electoral right, the principle of fair competition in elections among subjects implementing the passive electoral right, as well as the principles of transparency of the electoral process and justice. Thus, when consolidating the duty of institutions organising elections to provide for voters the information about the fact that a candidate was found guilty of a criminal act, the legislature should stipulate how such information must be properly presented so that voters could decide on the eligibility of the candidate concerned.

[...]

... the legislature must stipulate that voters must be informed about the especially important facts of the life of a candidate for a member of a municipal council (*inter alia*, that such a person was found by a court guilty of an act that, under the law of the Republic of Lithuania, is regarded as criminal), which may be of essential significance to voters in deciding on the eligibility of the candidate for the elective position, by, *inter alia*, respectively indicating such facts on the poster of a candidate or on the poster with a list of candidates issued by the electoral commission.

[...]

It needs to be noted that there is an essential difference between, on the one hand, the criminal acts that were later decriminalised, the criminal acts that are regarded under the law of a foreign state as criminal, but are not and were never regarded as criminal under the law of the Republic of Lithuania, or the fact that persons are held criminally liable for such acts is deemed political persecution, and, on the other hand, the acts that are regarded as criminal under the law of the Republic of Lithuania. Therefore, it is not allowed to establish the duty for institutions organising elections to present on the poster of a candidate or on the poster with a list of candidates the aforementioned essentially different information in the same manner in order not to create the preconditions for misleading the voters, since, otherwise, the said essentially different information regarding candidates could create an equally negative impression about the candidates concerned; this would impede the possibility for voters to decide rightly on the eligibility of the candidate for the elective position.

The incompatibility of the office of a member of a municipal council with another office

The Constitutional Court's ruling of 17 November 2011

... the Constitution, *inter alia*, the principles of the organisation and activities of self-government institutions, which are laid down in Paragraphs 1 and 4 of Article 119 thereof, gives rise to the duty of the legislature to stipulate that members of municipal councils may not take up in the respective municipal institutions such positions while holding which they would have the powers to decide the questions related to the adoption and implementation of decisions of the municipal council, would be accountable to the municipal council and/or directly subordinate to certain members of the municipal council as, for example, the mayor. Otherwise, the principles of the equality of the legal status of the members of municipal councils, the accountability of municipal institutions to the municipal council that forms them, and the supremacy of municipal councils over the municipal institutions that are accountable to them, which are entrenched in Paragraphs 1 and 4 of Article 119 of the Constitution, would be violated.

The specific nature of the activities of municipal politicians that is important for the legal regulation governing their work remuneration (Paragraph 1 of Article 48 of the Constitution)

See 2. The constitutional status of persons, 2.4. Economic, social, and cultural rights, 2.4.1. Economic rights, 2.4.1.2. The right to work, 2.4.1.2.4. The right to receive fair pay for work, the ruling of 30 April 2013.

The specific nature of the activities of municipal politicians that is important for the legal regulation governing the organisation of their work, rest, and annual paid leave (Article 49 of the Constitution)

See 2. The constitutional status of persons, 2.4. Economic, social, and cultural rights, 2.4.1. Economic rights, 2.4.1.2. The right to work, 2.4.1.2.6. The right to rest and leisure, as well as to annual paid leave, the ruling of 30 April 2013.

The autonomy of municipal budgets

The Constitutional Court's ruling of 11 June 2015

Paragraph 1 of Article 121 of the Constitution prescribes that municipalities draft and approve their budgets.

In its ruling of 14 January 2002, the Constitutional Court held that, under the Constitution, the autonomy of municipal budgets is an important aspect of the constitutional principle of the independence of municipalities within the limits of their competence defined by the Constitution and laws and that the independence of municipalities in the sphere of the budget is not absolute.

Financing the functions performed by municipalities

The Constitutional Court's ruling of 11 June 2015

... the legislature has the discretion to choose the priorities in funding municipalities, as well as the ways and forms by which the state supports municipalities, including the way of the calculation of the funds of the state budget meant for municipalities and the manner of the allocation of such funds; however, in doing so, the legislature must pay regard to the Constitution, *inter alia*, the imperatives (consolidated in Article 120 and Paragraph 1 of Article 121 of the Constitution) of ensuring the funding required for a fully fledged functioning of self-government and for the implementation of municipal functions, and must observe the constitutional principles of responsible governance and proportionality, according to which the funding of municipal functions must be adequate to the extent of such functions. These constitutional imperatives give rise to the duty of the legislature to establish such a legal regulation whereby, in proportion to the requirement for funding the functions performed by municipalities, funds for financing municipal functions would be allocated, *inter alia*, by transferring certain taxes (share thereof) to municipalities, where account is taken of the resources, as well as the material and financial capacity of the state and society.

After the legislature imposes the personal income tax as one of the sources for fulfilling the functions of the state (municipality) and decides that this tax (share thereof) is allocated to municipalities in order to fund their activities, Article 120 and Paragraph 1 of Article 212 of the Constitution, as well as the constitutional principles of responsible governance and proportionality, give rise to the duty of the legislature to establish such a legal regulation by which the funds received from the personal income tax, as well as all from other funds allocated for financing municipal functions, would be distributed in proportion to the extent of the functions performed by municipalities.

The Constitutional Court has noted that, if the extent of the functions assigned to municipalities is changed, the legislature may and, in some cases, even must correspondingly amend (either increase or decrease) the funding of municipal functions (ruling of 8 July 2005).

... the Constitution, *inter alia*, Article 120 and Paragraph 1 of Article 121 thereof, gives rise to the duty of the legislature to establish such a legal regulation whereby the funding of municipal functions could be correspondingly amended (either increased or decreased) not only in the cases where the extent of municipal functions is changed, but also when the need for funds undergoes changes due to other objective reasons as, for instance, demographic or economic changes.

... under the Constitution, *inter alia*, under Article 120 and Paragraph 1 of Article 121 thereof, as well as the constitutional principle of the equality of the rights of persons, the legislature, in an effort to ensure the funding required for a fully fledged functioning of self-government and the implementation of municipal functions and by taking into account the differences in the social and economic development of

regions, may choose a model for equalising the financial capacity of municipalities and establish a mechanism for such equalisation. In doing so, the legislature must pay regard to the Constitution, *inter alia*, the constitutional principle of a state under the rule of law, whereby the legal regulation laid down in laws and other legal acts must be clear, comprehensible, and coherent, and must observe the constitutional principle of responsible governance, by which the state institutions and officials must properly exercise the powers conferred on them according to the Constitution and laws.

According to Article 120 and Paragraph 1 of Article 121 of the Constitution, when they are interpreted in conjunction with the constitutional principle of a state under the rule of law, which encompasses the requirements of legal certainty, legal clarity, legal security, and the protection of legitimate expectations, and in conjunction with the constitutional principle of responsible governance, the legislature must establish a clear procedure for calculating the funds allocated to municipalities, where such a procedure would ensure the funding required for a fully fledged functioning of self-government and for the fulfilment of municipal functions, and would also ensure the independence and freedom of the activities of municipalities within their competence defined by the Constitution and laws.

The legal regulation governing the remuneration of municipal politicians (Paragraph 1 of Article 48 and Paragraph 3 of Article 119 of the Constitution)

The Constitutional Court's ruling of 29 May 2019

... the provision "Everyone ... shall have the right ... to receive fair pay for work" of Paragraph 1 of Article 48 of the Constitution should be interpreted in conjunction with Paragraph 3 of Article 119 of the Constitution. Under Paragraph 3 of Article 119 of the Constitution, the procedure for the organisation and activities of self-government institutions is established by law.

It should be noted that, under Paragraph 3 of Article 119 of the Constitution, while regulating the procedure for the organisation and activities of municipal councils as political representative self-government institutions, the legislature also has the discretion to establish the legal regulation governing the organisation of the work and the system of the remuneration of municipal council members who are elected, *inter alia*, to organise the activity of the respective municipal councils, implement the related powers, and represent the respective municipalities (as, for instance, persons holding the office of mayor or deputy mayor as provided for by law). When the amount of the remuneration of mayors (deputy mayors) is established by means of a legal regulation, regard must be paid to the imperative of fair pay for work, as laid down in the Constitution, *inter alia*, Paragraph 1 of Article 48 thereof, as well as to the circumstances leading to the necessity to differentiate the amount of this remuneration.

The Constitutional Court has noted that, in addition to the number of residents living in their territory, municipalities can, *inter alia*, considerably vary in their size and the scope of issues assigned to their competence due to the significance and complexity of these issues; thus, the scope of the activity of municipal politicians and the extent of their responsibility may also vary due to the particularities of the municipality concerned; therefore, if the amount of the remuneration of mayors (deputy mayors) is differentiated by means of a legal regulation, account must also be taken of this specific nature of their activity (ruling of 30 April 2013).

... the imperative of fair pay for work, as consolidated in Paragraph 1 of Article 48 of the Constitution, gives rise to the requirement for the legislature, when differentiating the amount of the remuneration of municipal council members who are elected, *inter alia*, to organise the activity of the respective municipal councils, implement the related powers, and represent the respective municipalities (as, for instance, persons holding the office of mayor or deputy mayor as provided for by law), to draw on the clear and objective criteria laid down by means of a law, which constitute an essential element of the right to receive fair pay for work. Regulating the system of remuneration paid to these persons, the legislature has broad discretion to choose and lay down, in laws, the criteria for differentiating the amount of their remuneration. The amount of the remuneration of municipal mayors and deputy mayors may be differentiated in view of the number of municipal residents; however, the differentiation of the amount of the said remuneration according to this sole criterion may not violate the constitutional imperative of fair pay for work. In

exercising its discretion and taking into account the particularities and differences that exist among municipalities and have influence on the scope of the activity of mayors and deputy mayors and on the extent of their responsibility, the legislature may also provide for other objective criteria determining the amount of the remuneration of municipal mayors and deputy mayors.

[...]

Thus, under the Constitution, *inter alia*, Paragraph 1 of Article 48 thereof, exercising its discretion, granted under Paragraph 3 of Article 119 of the Constitution, to establish the system of remuneration paid to municipal council members who are elected, *inter alia*, to organise the activity of the respective municipal councils, implement the related powers, and represent the respective municipalities (as, for instance, persons holding the office of mayor or deputy mayor as provided for by law), *inter alia*, to regulate the amount of their remuneration, the legislature is not allowed to establish such a legal regulation under which the amount of the remuneration of municipal mayors (deputy mayors) would be the same despite the fact that the complexity of their functions, the scope of their activity, the nature of their work, and the extent of their responsibility for carrying out the said functions considerably differ due to the particularities of the municipalities concerned, *inter alia*, differences in their size and the number of their residents, as well as their legal status.

10.3. LOCAL GOVERNANCE

Local governance is the performance of the functions of state governance in particular localities (Paragraph 1 of Article 123 of the Constitution)

The Constitutional Court's ruling of 18 February 1998

The constitutional provisions on state governance in particular localities are formulated in Paragraph 1 of Article 123 of the Constitution: "At higher-level administrative units, governance shall be organised by the Government according to the procedure established by law."

Local governance is the fulfilment of the functions of state governance (i.e. the functions of executive power) in particular localities, i.e. the respective administrative units. The functions of local governance are, as a rule, performed by officials appointed by the central authority (or by institutions formed by the said officials) who most generally act in the name or on the instructions (authorisation) of the central authority.

11. THE STATE BUDGET AND FINANCES

11.1. THE STATE BUDGET. THE PROPERTY LIABILITIES OF THE STATE. TAXES

The constitutional duty to pay taxes; the competence of the Seimas to establish legal responsibility for violations of tax laws (Item 15 of Article 67 of the Constitution)

The Constitutional Court's ruling of 6 December 2000

... under Item 15 of Article 67 of the Constitution, the Seimas “shall establish state taxes and other compulsory payments”. The said norm of the Constitution also implies the constitutional duty of taxpayers to pay the established taxes in due time. Taxes are a necessary condition of the functioning of the state; therefore, the constitutional duty to pay taxes established in laws is consolidated in laws as a requirement by the state for all taxpayers. Taxpayers must transfer part of their property, which is expressed as a certain amount of money, into the state (municipal) budget as, otherwise, the public interest and the rights and interests of other persons protected by law would be infringed.

It needs to be noted that, in an attempt to ensure the fulfilment of the duty to pay taxes, the state is entitled to establish legal responsibility for violations of tax laws, types of such responsibility, particular penalties, as well as fines, which may be imposed on natural and legal persons who violate tax laws.

Although, under the Constitution, the Seimas is granted competence to establish state taxes and legal responsibility for violations of tax laws, however, this does not mean that the legislature may establish any type of legal responsibility or any type of penalties or fines of any amount for violations of tax laws. When establishing the amounts of fines for violations of tax laws, the legislature is bound by the constitutional principles of justice and a state under the rule of law, as well as other constitutional requirements.

... conforming to the constitutional principles of justice and a state under the rule of law, the fines established in laws for violations of tax laws must be of such amounts that are necessary to achieve the legitimate and generally important objective – to ensure the fulfilment of the constitutional duty to pay taxes.

The budgetary system of Lithuania; the state budget

The Constitutional Court's ruling of 14 January 2002

Paragraph 1 of Article 127 of the Constitution prescribes: “The budgetary system of the Republic of Lithuania shall consist of the independent State Budget of the Republic of Lithuania and independent municipal budgets.”

Paragraph 1 of Article 121 of the Constitution prescribes: “Municipalities shall draft and approve their budgets.”

Paragraph 1 of Article 131 of the Constitution prescribes: “The draft State Budget shall be considered by the Seimas and shall be approved by law before the start of the new budget year.”

Thus, according to the Constitution, the state budget and municipal budgets are independent. Together they form the budgetary system of Lithuania.

It is generally recognised that the state budget is a plan of the state revenue and expenditure for a specific period, i.e. a financial plan of the state, according to which public funds are redistributed. Similarly, municipal budgets are municipal plans of revenue and expenditure for a specific period. Under Article 129 of the Constitution, this period is a budget year lasting from 1 January until 31 December. Legally, the state budget is a law that approves the state budget, i.e. the plan of revenue and expenditure for a certain budget year.

According to the constitutional concept of the state budget, the state revenue and expenditure planned for the budget year must be provided for in the state budget approved by means of a law.

Paragraph 2 of Article 127 of the Constitution prescribes that the revenue of the state budget is raised from taxes, compulsory payments, levies, income from state-owned property, and other income, and Paragraph 3 of the same article prescribes that taxes, other payments to the budgets, and levies are established by the laws of the Republic of Lithuania.

Under Item 4 of Article 94 of the Constitution, the Government prepares a draft state budget and submits it to the Seimas. Article 130 of the Constitution provides that the Government draws up a draft state budget and presents it to the Seimas not later than 75 days before the end of the budget year, Item 14 of Article 67 of the Constitution prescribes that the Seimas approves the state budget, and Paragraph 1 of Article 131 thereof states that the draft state budget is considered by the Seimas and is approved by law before the start of the new budget year.

Paragraph 2 of Article 131 of the Constitution prescribes that, during the consideration of the draft budget, the Seimas may increase expenditure provided that it specifies financial sources for the additional expenditure. The expenditure established by means of laws may not be reduced as long as these laws are not altered.

Paragraph 2 of Article 132 of the Constitution provides that, during the budget year, the Seimas may change the budget. It is changed according to the same procedure according to which it is drawn up, adopted, and approved. When necessary, the Seimas may approve an additional budget.

The constitutional concept of the state budget implies that the drafting (forming) of the state budget, its consideration at the Seimas and its approval by means of a law, as well as its execution, are separate steps of the budgetary process.

The powers of the Seimas and the Government in the sphere of the state budget

The Constitutional Court's ruling of 14 January 2002

In drafting (forming) a draft state budget, as well as in considering and approving the state budget, the powers of the Seimas as a legislative body and the powers of the Government as an executive body are separated; the constitutional principle of the separation of powers must be ensured in this area.

[...]

Under the Constitution, only the Government has the right and duty to prepare (form) a draft state budget. Once the Government has prepared a draft state budget, it presents it to the Seimas for approval following the terms provided for in the Constitution. Under the Constitution, during the budget year the budget may also be changed only on the proposal of the Government. An additional budget is also approved by means of a law on the proposal of the Government. Drafting (forming) a state budget and presenting it to the Seimas belong to the sphere where the Government adopts decisions regarding state governance, as prescribed by the Constitution. Therefore, a draft state budget is presented to the Seimas by a resolution of the Government.

The Government has not only the constitutional right, but also the constitutional duty to provide for specific revenue sources in a draft state budget, to indicate their amounts, and the specific amounts intended for financing the needs of the state and society.

When submitting a draft budget to the Seimas, the Government must substantiate the revenue and allocations indicated therein with the evaluation of the needs and possibilities of the state and society. This information must be public. A draft state budget prepared by the Government must provide for funds necessary for the implementation of laws.

Only the Seimas has the prerogative to consider a draft state budget presented by the Government and to approve it by means of a law. According to the Constitution, the adoption of the law on the state budget constitutes the final step in the formation of the budget.

During the consideration of the draft budget, the Seimas may increase the expenditure provided that it specifies financial sources for the additional expenditure (Paragraph 2 of Article 131 of the Constitution). If the state budget is not approved on time, in such cases, at the beginning of the budget year, the budget

expenditure each month may not exceed 1/12 of the expenditure of the state budget of the previous budget year (Paragraph 1 of Article 132 of the Constitution).

According to the Constitution, the budget year coincides with a calendar year. The Seimas must approve the state budget for a budget year, but not for some other period of time. Each budget year, the Seimas must form the state budget for the following budget year taking into consideration the existing social and economic situation, the needs and possibilities of society and the state, the available or potential financial resources and the liabilities of the state, as well as a number of other important factors. When passing the law on the state budget, the Seimas must pay attention to the striving for a just and harmonious society enshrined in the Constitution.

By approving the state budget by means of a law, the Seimas approves the revenue and allocations of the state budget, based on the evaluation of the needs and possibilities of society and the state. The constitutional concept of the budgetary process implies that all income sources of the state budget, planned revenue and expenditure of the state budget, the amount of such funds, and the subjects to whom allocations from the state budget are given must be specified in the law on the state budget.

Establishing the entities eligible for the allocations from the state budget falls solely within the competence of the Seimas. The Seimas may not waive or transfer such competence to another institution, while the latter may not accept it. Otherwise, the competence of the Seimas to form the state budget would be denied: the said competence would become shared with the executive. This would in turn deny the constitutional principle of the separation of powers. Acts issued by executive bodies can only deal with the execution of the state budget and they may not compete with or change the law on the state budget.

Once approved by the Seimas, the state budget becomes a law. Under Item 4 of Article 94 of the Constitution, the Government executes the state budget. The provision of Item 4 of Article 94 of the Constitution, whereby the Government executes the state budget, means that the Government has the duty to ensure that the budget receives the specified revenue and that these funds are transferred to the subjects specified in the law on the state budget. The Constitutional Court has previously held that, under the Constitution, the Government has to execute the approved state budget according to its purpose and to the extent prescribed by the budget law, and that it does not have the right to change the amounts of the allocations or their possessors established in the budget law (ruling of 3 June 1999).

The expenditure established by means of laws may not be reduced as long as these laws are not altered (Paragraph 2 of Article 131 of the Constitution)

The Constitutional Court's ruling of 14 January 2002

Paragraph 2 of Article 131 of the Constitution provides, *inter alia*, that the expenditure established by law may not be reduced as long as these laws are not altered.

When interpreting the provision of Paragraph 2 of Article 131 of the Constitution, it should be noted that, if certain laws provide for certain expenditure, then the Government must follow and execute these laws in the course of drafting (forming) a draft state budget. Under the Constitution, the Government has the duty to submit to the Seimas such a draft state budget that would be consistent with the provisions of such laws pertaining to state expenditure.

The Constitutional Court has held that, in the course of drafting and adopting legal acts, state institutions must adhere to the principle of the state under the rule of law, which is enshrined in the Constitution, and that the provision, contained in Paragraph 2 of Article 5 of the Constitution, that the scope of powers is limited by the Constitution means that the Seimas, as the legislator of laws and other legal acts, is independent inasmuch as its powers are not limited by the Constitution (ruling of 12 July 2001).

Under the Constitution, the Seimas is bound by its own laws. Thus, if certain laws provide for certain expenditure, the Seimas must follow such laws during the deliberation and approval of the state budget. Under Paragraph 2 of Article 131 of the Constitution, during the process of the approval of the state budget, the expenditure established by law may not be reduced as long as these laws are not altered.

It follows from the constitutional concept of the state budget, namely from the provision of Article 129 of the Constitution, whereby the budget year starts on 1 January and ends on 31 December, that laws

providing for certain expenditure may not establish such a legal regulation that would deny the constitutional right and duty of the Government to draw up the state budget for a budget year and the constitutional right and duty of the Seimas to approve the state budget for a budget year. Such laws may not change the law on the state budget. The provision of Paragraph 2 of Article 131 of the Constitution, whereby the expenditure established by law may not be reduced as long as these laws are not amended, must not be interpreted as making it possible to provide for such funding of certain needs that is not included in the law on the state budget of a given year.

It needs to be emphasised that the laws specified in Paragraph 2 of Article 131 of the Constitution, which provide for certain expenditure, are not laws that may substitute for or change the law on the state budget. These are laws making it possible to ensure the succession of the relationships connected with the state budget each budget year and the financial continuity when the persistent pursuit of certain (special, long-term, strategic) public and state objectives requires more funds than it is possible to allocate in one budget year.

Thus, the laws specified in Paragraph 2 of Article 131 of the Constitution, which provide for certain expenditure, are an exception rather than a rule. It should be stressed that such laws can only provide for the expenditure necessary in order to achieve a defined and universally important objective over a certain period established by means of a law, provided these needs cannot be satisfied in one budget year. Such laws may not provide for funds necessary for the execution of routine functions of the state or for funds necessary to finance everyday needs of society. Otherwise, the constitutional concept of the state budget would be distorted: the constitutional institution of the budget year would lose its purpose, the constitutional right and duty of the Government to prepare a draft state budget and the constitutional right and duty of the Seimas to approve it for the budget year by taking into consideration the existing social and economic situation, the needs and possibilities of society and the state, the available or potential financial resources, the liabilities of the state, as well as a number of other important factors, would be denied. This would also result in the preconditions for violating the constitutional imperative of social justice and social harmony.

The constitutional duty to pay taxes (Article 127 of the Constitution)

The Constitutional Court's ruling of 17 November 2003

The provisions of Article 127 of the Constitution, which establish the budgetary system of Lithuania and indicate the sources of forming the revenue of the state budget and municipal budgets, also consolidate the constitutional duty to pay taxes.

In its ruling of 10 July 1997, the Constitutional Court noted that, when taxes are not paid or are overdue, the state (municipal) budget does not receive part of its revenue, and the possibilities for the state (municipality) to perform the functions established for it are limited. Furthermore, at the time when part of subjects of economic activity do not pay taxes, the other subjects – honest taxpayers – find themselves at a disadvantage; thus, the essential principles of a free market based on fair competition are violated.

The legal regulation of tax relationships (Item 15 of Article 67 and Paragraph 3 of Article 127 of the Constitution)

The Constitutional Court's ruling of 2 September 2004

Paragraph 3 of Article 127 of the Constitution states that taxes, other payments to the budgets, and levies are established by the laws of the Republic of Lithuania.

Under Item 15 of Article 67 of the Constitution, the Seimas establishes state taxes and other compulsory payments.

When interpreting Paragraph 3 of Article 127 of the Constitution, the Constitutional Court has held on more than one occasion in its rulings that the said paragraph consolidates the form (type) of a legal act by which taxes are established: taxes may be established only by means of a law.

When interpreting Item 15 of Article 67 of the Constitution, the Constitutional Court has held in its rulings that state taxes are established exclusively by the Seimas.

Thus, under the Constitution, it is only the Seimas that may establish taxes and this may be done only by means of a law. When establishing state taxes, the principles and norms of the Constitution must be complied with.

In its rulings, the Constitutional Court has held on more than one occasion that such essential elements of tax as the object of tax, the subjects of tax relationships, their rights and duties, the sizes (rates) of tax, the time limits of payment, tax exceptions and tax concessions, fines and late payment interest should be established by means of a law.

In order to ensure the proper payment and collection of taxes, it is not sufficient only to establish taxes as the duty to the state – it is also essential to regulate the procedure of their payment, which would, *inter alia*, comprise the procedures of tax administration, the methodology of calculation of taxes, etc. The legal regulation of tax relationships is not only the establishment of taxes by means of a law, but also the establishment of the procedure for implementing tax laws. It is not required in the Constitution to establish exclusively by means of a law the procedure of implementing tax laws: under the Constitution, the procedure for implementing tax laws, as well as the procedure for calculating a particular payable tax established by means of a law, may be established not only by means of a law, but also by means of a substatutory act (rulings of 15 March 2000 and 17 November 2003).

The Constitutional Court has also held that the substatutory acts establishing the procedure for implementing tax laws may not contain any norms laying down a legal regulation that would be different from the one established by means of a law or would compete with the norms of a law (ruling of 17 November 2003).

The legal regulation of tax relationships (establishing late payment interest on the non-payment or undue payment of taxes) (Item 15 of Article 67 and Paragraph 3 of Article 127 of the Constitution)

The Constitutional Court's ruling of 26 September 2006

Taxes, other payments to the budgets, and levies are established by the laws of the Republic of Lithuania (Paragraph 3 of Article 127 of the Constitution). The Seimas establishes state taxes and other compulsory payments (Item 15 of Article 67 of the Constitution).

When interpreting the provisions of the Constitution concerning taxes and other compulsory payments, the Constitutional Court has formed the relevant official constitutional doctrine in its acts. ... under the Constitution, taxes, as an obligation, may be established (introduced) only by means of a law; it is necessary to establish such a legal regulation that would ensure that taxes would be paid properly and on time; for that reason, when paying regard to the Constitution (*inter alia*, the constitutional principles of justice, proportionality, legal certainty and clarity), various measures may be chosen such as fines, late payment interest, interest, etc. Such essential elements of tax as the object of tax, the subjects of tax relationships, their rights and duties, the sizes (rates) of tax, the time limits of payment, tax exceptions and tax concessions, fines and late payment interest must be established by means of a law. The procedure for implementing tax laws may also be established by means of substatutory acts.

... when establishing, by means of a law, particular coercive measures for failure to implement tax obligations, *inter alia*, late payment interest on the non-payment or undue payment of taxes, the legislature has a certain degree of discretion. For instance, the legislature may choose whether to establish absolute amounts of certain late payment interest on the non-payment or undue payment of taxes or to establish, by means of a law, such a legal regulation where the amounts of the established late payment interest on the non-payment or undue payment of taxes would depend on certain indicators and could be subject to change. It needs to be emphasised that, after having chosen such a way of a legal regulation where the amounts of late payment interest on the non-payment or undue payment of taxes depend on certain indicators specified in the law and are subject to change, the legislature must establish, by means of a law, not only the subject (state institution, official) who has the powers to state the existence of the said indicators, upon which, according to the law, such amount of late payment interest depends, and to establish the amounts of such late payment interest according to these indicators, but also the criteria in the law that must be followed by the said subject when establishing the said amounts of late payment interest.

The powers of the legislature to establish taxes (Articles 67 and 127 of the Constitution)

The Constitutional Court's ruling of 22 December 2006

The establishment of taxes is the exceptional constitutional competence of the legislature (Articles 67 and 127 of the Constitution). Taxable objects may be very varied. The legislature that has the powers, which arise from the Constitution, to establish what is taxed also has the discretion to decide whether to tax various benefits received from foreign states, *inter alia*, pensions. Taking account of the Constitution, the legislature also has the right to amend the established legal regulation on taxes. In imposing taxes, the legislature must pay regard to the norms and principles of the Constitution, *inter alia*, the constitutional principles of justice, reasonableness and proportionality. When establishing taxes, the legislature is also bound by the state obligations arising from the international treaties of the Republic of Lithuania (*inter alia*, from the bilateral and multilateral treaties for the avoidance of double taxation of income and/or capital), as well as by the requirements arising from membership of Lithuania in the European Union.

The features characteristic of taxes and other compulsory payments (except levies) (Item 15 of Article 67 of the Constitution)

The Constitutional Court's ruling of 12 February 2010

... the ... provisions of the official constitutional doctrine that have been formulated by the Constitutional Court when it interpreted the features characteristic of taxes and other compulsory payments (except levies) [are as follows]:

- taxes are compulsory and unrequited payments of a certain amount established by means of a law and paid to the state (municipal) budget by legal and natural persons in due time (ruling of 24 January 2006); taxes are paid providing there exists a permanent taxable object (ruling of 15 March 1996);

- state taxes and other compulsory payments are a pecuniary obligation of legal subjects to the state; according to the Constitution, only the Seimas may establish state taxes and other compulsory payments and it may establish them only by means of a law, which is an important guarantee of the protection of the rights of a person (ruling of 3 June 2002);

- economic and social processes are regulated, useful economic efforts are encouraged, and priorities of economic development are supported by means of taxes (rulings of 9 October 1998 and 17 November 2003); taxes are characterised by the fact that they are paid regularly at specified intervals and they are not of a directly reimbursable nature, i.e. after they are paid to the state institution that accepts the said tax, the aforementioned institution is under no obligation to perform any actions for or render any particular service to taxpayers (ruling of 15 March 1996); tax relationships are a matter of regulation by public law; tax relationships are legal relations of an authoritative nature between taxpayers and the institutions of executive power of the state (ruling of 17 November 2003); therefore, the method of an administrative legal regulation is applied first of all for their realisation (ruling of 10 July 1997).

The constitutional concept of levies (Paragraphs 2 and 3 of Article 127 of the Constitution)

The Constitutional Court's ruling of 12 February 2010

When interpreting the provision “The revenue of the State Budget shall be raised from taxes, compulsory payments, levies, income from state-owned property, and other income” of Paragraph 2 of Article 127 of the Constitution, the Constitutional Court held in its ruling of 15 March 1996, *inter alia*, that “... according to the Constitution, five legal forms of the revenue of the state budget may be singled out: regular taxes, other compulsory payments, levies, income from state-owned property, and other income. They are specified in particular laws”. Thus, in the sense of Paragraphs 2 and 3 of Article 127 of the Constitution, levies are one of the legal forms of the revenue of the state budget.

It needs to be mentioned that, in the ruling of 15 March 1996 ... the Constitutional Court noted, *inter alia*, that ... a levy ... has a two-way character, as the subjects of the legal relationships that occur

after [it] has been paid have particular rights and obligations; there are two essentials of paying compulsory levies: the object subject to taxation and the actions performed or services rendered by competent state institutions to legal and natural persons; as a rule, most levies are voluntary payments, i.e. a person who desires to get some service or a particular action from a state establishment consents to pay a levy before the actions are performed or documents bearing legal force are granted and, on such grounds, he/she becomes entitled to demand that the requested actions be performed or the documents be granted.

... both taxes and state levies are established by means of a law and are paid to the state (municipal) budget; however, in the sense of Item 15 of Article 67 of the Constitution, state taxes are characterised by the fact that they are compulsory, unrequited, and unilateral; tax relationships are legal relations of an authoritative nature between taxpayers and the state institutions Meanwhile, a levy in the sense of Paragraphs 2 and 3 of Article 127 of the Constitution is a compulsory payment to the state budget for actions performed or services rendered by the competent institutions of the state to legal and natural persons.

The duty of the state institutions that form and execute state economic and financial policies to prepare for possible particularly difficult economic and financial situations

The Constitutional Court's decision of 20 April 2010

Under the Constitution, *inter alia*, under the constitutional principles of a state under the rule of law and responsible governance, the state institutions forming and pursuing state economic and financial policies must also assess the fact that, due to special circumstances (economic crisis etc.), there may arise a particularly difficult economic and financial situation in the state. Therefore, the state institutions must take all possible measures in order to predict the tendencies in the economic development of the state and to prepare for the possible emergence of such particularly difficult economic and financial situations.

Revising the state budget upon the emergence of a particularly difficult economic and financial situation in the state

The Constitutional Court's decision of 20 April 2010

In its acts, the Constitutional Court has noted the following on more than one occasion: neither the Government, which, under the Constitution, has the powers to execute the state budget, nor the Seimas which, under the Constitution, approves the state budget by means of a law, may refrain from reacting to such an essential change in the economic and financial condition of the state where, due to special circumstances (economic crisis, a natural disaster, etc.), a particularly difficult economic and financial situation occurs in the state; in such cases, due to objective reasons, there may be a lack of funds for the performance of state functions and for the satisfaction of public interests; under such circumstances, the respective legal regulation may be subject to change; upon the emergence of a particularly difficult economic and financial situation in the state, there may be difficulties in collecting the revenue provided for in the law on the state budget (and on municipal budgets); thus, the required funds are not obtained for financing certain needs provided for in the law on the state budget (and on municipal budgets); in such cases (but, certainly, not in such cases exclusively), the state budget may be amended before the end of the budget year; such an option is *expressis verbis* provided for in Paragraph 2 of Article 132 of the Constitution; upon amending the state budget (and municipal budgets), the expenditure (allocations) may be reduced (rulings of 28 March 2006, 22 October 2007, and 11 December 2009 and the decision of 13 November 2007).

The state budget is formed for a budget year; the duty of the legislature, before approving the state budget for a subsequent year, to reassess the actual economic and financial situation in the state

The Constitutional Court's decision of 20 April 2010

When disclosing the constitutional concept of the state budget, the Constitutional Court has held that, under the Constitution, the budget year coincides with a calendar year; the Seimas must approve the state

budget for a budget year, but not for some other period of time; each budget year, the Seimas must form the state budget for the following budget year taking into consideration the existing social and economic situation, the needs and possibilities of society and the state, the available or potential financial resources and the liabilities of the state, as well as a number of other important factors; when adopting the law on the state budget, the Seimas must pay regard to the striving for a just and harmonious society, which is enshrined in the Constitution (ruling of 14 January 2002).

In this context, it needs to be noted that the constitutional concept of the state budget, *inter alia*, the constitutional institution of a budget year, implies that, in cases where there is an extreme situation in the state (economic crisis etc.) due to which the economic and financial situation in the state has changed to the extent that, *inter alia*, it is impossible to ensure the accumulation of the funds necessary for the payment of the remuneration for work of officials and state servants of the institutions that are funded from state and municipal budgets (remuneration for work of other employees who are remunerated for work from the funds of state and municipal budgets) or to ensure the accumulation of the funds necessary for the payment of pensions and where, due to this, the respective legal regulation has to be modified by reducing the remuneration and pensions of the said persons, it is allowed to reduce the remuneration and pensions for no longer than one budget year. The constitutional institution of a budget year gives rise to the duty of the legislature, in the course of deliberating and approving the state budget for a subsequent year, to reassess the actual economic and financial situation in the state and to decide whether the said situation is still a particularly difficult one, *inter alia*, whether the collection of the revenue of the state budget is still disordered to the extent that, due to this, the state is unable to perform the obligations undertaken by it and, therefore, whether it is also necessary to establish for the subsequent budget year such a legal regulation whereby the reduced remuneration and pensions would have to be paid.

The powers of the legislature to postpone the performance of the financial obligations undertaken by the state upon the emergence of a particularly difficult economic and financial situation in the state

The Constitutional Court's ruling of 6 February 2012

... upon the emergence of a particularly difficult economic and financial situation in the state where, *inter alia*, the collection of the revenue of the state budget is disordered to the extent that, due to this, the state is unable to perform (*inter alia*, when exercising its discretion) certain undertaken financial obligations within the established time limits, the legal regulation related to the performance of the said obligations could be modified, *inter alia*, by postponing the performance of such obligations. In doing so, the legislature must observe the requirements stemming from the Constitution, *inter alia*, the principles of justice, reasonableness, and a state under the rule of law.

The law on the state budget and municipal budgets is a law of time-limited validity and time-limited application

The Constitutional Court's ruling of 15 February 2013

Paragraph 1 of Article 131 of the Constitution prescribes that the draft state budget is considered by the Seimas and is approved by means of a law before the start of the new budget year. In its ruling of 14 January 2002, the Constitutional Court noted that, when approving the state budget by means of a law, the Seimas approves the state budget revenue and expenditure (allocations).

[...]

The Constitutional Court has held that every law on the state budget and municipal budgets is a law of time-limited validity and time-limited application; the financing of the administrators of allocations from the funds of the state budget and of municipal budgets of given years is completed when a given budget year ends, i.e. on 31 December of that year; after this date, the law on the state budget and on municipal budgets may not be applied at all, *inter alia* – it needs to be particularly emphasised – after the said date, the transfer of allocations of the previous budget year to any administrator of allocations is impossible in such a way that would create the impression that the said transfer was made in the previous budget year,

since a new budget year has started; therefore, even if it were established that the impugned legal regulation was in conflict with the Constitution, no intervention of the law-making subjects (Seimas and the Government respectively) in that legal regulation is possible, since the relevant legal acts were intended for the regulation of the relationships that are over and, thus, they no longer exist; such an intervention would be meaningless and irrational, since this would mean that particular law-making subjects try to regulate the past; consequently, this would mean that they attempt to change the past (decision of 13 November 2007 and the ruling of 29 June 2012).

[...]

... when the respective legal act is not only invalid, but also must not be applied at all, the Constitutional Court has the discretion to decide on an investigation into the constitutionality of such a legal act. When doing so, it must assess not only the fact whether this law is intended for a certain budgetary period only, but also other important circumstances, *inter alia*, the fact whether such an investigation could be significant for the adoption of the budget laws of subsequent years.

The assessment whether the state budget provides for sufficient or insufficient funds for certain needs (objectives)

The Constitutional Court's ruling of 15 February 2013

The question whether certain needs (objectives) are allocated sufficient or insufficient funds from the state budget is not about the compliance of the state budget with the Constitution, but about budget planning, the evaluation of the needs of society and the state, their balance with the possibilities of society and the state, and, consequently, social and economic expediency (rulings of 14 January 2002 and 21 December 2006). The Constitutional Court does not decide these questions except the cases where the law on the state budget establishes such a legal regulation in which it is clear from the start that the said law clearly provides for insufficient funds or no finance for certain needs (objectives) by not providing at the same time for any other (alternative) sources of financing, where the said sources of financing, under the Constitution, may be provided for certain needs, and where such insufficient financing or the absence of such financing is clearly in conflict with the welfare of the nation, the interests of society and the State of Lithuania, and clearly denies the values consolidated, defended, and protected by the Constitution (ruling of 21 December 2006).

The concept of the state budget; the powers of the Seimas and the Government in the sphere of the state budget; requirements for the adoption and entry into force of laws affecting the revenue and expenditure of the state budget (*inter alia*, the requirement that amendments to laws affecting the revenue and expenditure of the state budget be adopted before the Seimas approves the state budget and the requirement that a sufficient *vacatio legis* be envisaged)

The Constitutional Court's ruling of 15 February 2013

... the state budget is an important constitutional institution. The grounds for drafting and approving the state budget are consolidated in the Constitution, *inter alia*, in Item 14 of Article 67 and Articles 127, 129–132 thereof.

[...]

The requirements arising from Paragraph 1 of Article 69 of the Constitution and the constitutional principle of a state under the rule of law are inseparable from the constitutional concept of the state budget and the constitutional imperatives established for drafting, considering, and approving the state budget.

The state budget is a plan of the state revenue and expenditure (allocations) for a specific period, i.e. a financial plan of the state, according to which public funds are redistributed; in the legal sense, the state budget is a law, by means of which a plan of the state revenue and expenditure (allocations) for a budget year is approved (ruling of 14 January 2002 and the decision of 13 November 2007). According to the constitutional concept of the state budget, the state revenue and expenditure planned for the budget year must be provided for in the state budget approved by means of a law (ruling of 14 January 2002). Article 129 of the Constitution provides that the budget year starts on 1 January and ends on 31 December.

The revenue of the state budget is raised from taxes, compulsory payments, levies, income from state-owned property, and other income (Paragraph 2 of Article 127 of the Constitution). Taxes – compulsory and unrequited payments established by means of a law and paid to the state budget by legal and natural persons at a fixed time – are one of the main sources of the revenue of the state budget (ruling of 17 November 2003); they are established by means of laws (Item 15 of Article 67 and Paragraph 3 of Article 127 of the Constitution).

Under the Constitution, the Seimas approves the state budget and supervises its execution (Item 14 of Article 67). The budgetary function of the Seimas is its classical function; when account is taken of the essential influence of the situation of public finances on the implementation of state functions, the budgetary function is one of the most important functions of the parliament of a democratic state under the rule of law. Paragraph 1 of Article 131 of the Constitution prescribes that the draft state budget is considered by the Seimas and is approved by law before the start of the new budget year.

Drafting the state budget is the exceptional competence of the Government: under the Constitution, the Government draws up a draft state budget and presents it to the Seimas not later than 75 days before the end of the budget year (Item 4 of Article 94 and Article 130). The Government and no one else has the powers to estimate in the draft budget of the state how much revenue will be received and from which sources, how much funds must be allocated and for what purposes, etc. (ruling of 11 July 2002). All planned revenue and expenditure of the state budget must be specified sufficiently clearly by concretely indicating the state revenue sources and the estimated sums of funds that could be received from those sources, the purpose of the expenditure for financing various spheres, the precise sums of the allocated funds and the subjects to which those funds would be allocated. Otherwise, no conditions would be created for implementing the real and effective parliamentary supervision over the execution of the state budget.

Under the Constitution, the Government has the exceptional powers to execute the state budget (Item 4 of Article 94). As noted in the Constitutional Court's ruling of 14 January 2002, the provision of Item 4 of Article 94 of the Constitution, whereby the Government executes the state budget, means that the Government has the duty to ensure that the budget receives the specified revenue and that these funds are transferred to the subjects specified in the law on the state budget.

As mentioned before, the Government, while implementing its powers to prepare a draft state budget, is bound by the constitutional requirement to submit it to the Seimas not later than 75 days before the end of the budget year, i.e. not later than on 17 October, whereas the Seimas is under the obligation to consider this draft and approve it by means of a law for the next budget year before its beginning, i.e. not later than on 31 December. The deadlines, consolidated *expressis verbis* in the Constitution, for presenting a draft state budget to the Seimas and for its approval mark the limits that may not be overstepped by the Government and the Seimas; however, the said deadlines do not imply that a draft state budget should be prepared, considered, and approved only just before the expiry of those deadlines. In this context, it needs to be mentioned that, under Paragraph 1 of Article 64 of the Constitution, the autumn session of the Seimas begins on 10 September; thus, a draft state budget may be submitted to the Seimas and the Seimas may start considering it much earlier than the deadline for its submission provided for in Article 130 of the Constitution.

Paragraph 1 of Article 132 of the Constitution provides that, if the state budget is not approved on time, in such cases, at the beginning of the budget year, the budget expenditure each month may not exceed 1/12 of the expenditure of the state budget of the previous budget year. Consequently, under the Constitution, if the Seimas does not approve the state budget before the beginning of a budget year, the application of the provisions of the state budget of the previous year would in fact be prolonged. At the same time, it needs to be emphasised that this constitutional provision may and must be understood only as one providing for a certain way out in a situation where the Seimas, in exceptional circumstances, does not approve the state budget within the time specified in Paragraph 1 of Article 131 of the Constitution; however, the said provision must not be interpreted as allowing the Seimas to disregard the established time limit.

The constitutional concept of the state budget and the constitutional principle of responsible governance mean that the state budget must be realistic and that the revenue and expenditure provided for therein must be based on an assessment of the needs and possibilities of society and the state. The Constitutional Court has held that the constitutional imperative of an open, just, and harmonious civil society, as well as the necessity to ensure the constitutional rights and freedoms of persons and to protect other values consolidated in the Constitution, implies the duty of the Government, in the course of preparing a draft state budget, and the duty of the Seimas, in the course of considering and approving the state budget, to take into consideration the state functions established in the Constitution, the existing economic and social situation, the needs and possibilities of society and the state, the available and potential financial resources and state obligations (*inter alia*, international ones), as well as other important factors (ruling of 11 July 2002). In this context, it also needs to be mentioned that, under the Constitution, *inter alia*, under the constitutional principle of responsible governance, the state institutions forming and pursuing state economic and financial policies must take all possible measures in order to predict the tendencies in the economic development of the state and to prepare for the possible emergence of particularly difficult economic and financial situations (decision of 20 April 2010).

The Constitutional Court has also held that the question whether certain needs (objectives) are provided with sufficient or insufficient funds from the state budget is not about the compliance of the state budget with the Constitution, but about budget planning, the evaluation of the needs of society and the state, their balance with the possibilities of society and the state, and, consequently, social and economic expediency (rulings of 14 January 2002 and 21 December 2006); however, this official constitutional doctrinal provision may not be interpreted as also including the cases where the law on the state budget establishes such a legal regulation in which it is clear from the start that the said law clearly provides for insufficient or no finance for certain needs (objectives) by not providing at the same time for any other (alternative) sources of financing, where the said sources of financing, under the Constitution, may be provided for certain needs, and where such insufficient financing or the absence of such financing is clearly in conflict with the welfare of the nation, the interests of society and the State of Lithuania, and clearly denies the values consolidated, defended, and protected by the Constitution (ruling of 21 December 2006).

The Constitutional Court has held in its acts on more than one occasion that the Seimas is bound not only by the Constitution, but also by its own laws. Thus, while considering and approving a draft state budget, the Seimas must follow the laws that imply a certain amount of estimated state revenue and expenditure, i.e. it must follow the tax laws and other laws that create the preconditions for planning and collecting the revenue of the state budget, as well as the laws determining state financial obligations and the respective planned state budget expenditure. The Constitutional Court has noted that, under the Constitution, the legislature, when passing a law or another legal act the implementation of which requires funds, must provide for the funds necessary for implementing such a law or another legal act; under the Constitution, the legislature may not create any such a legal situation where, after passing a law or another legal act the implementation of which requires funds, such funds are not allocated or the allocation thereof is not sufficient (rulings of 13 December 2004, 21 December 2006, and 29 June 2010).

The Government executes laws (Item 2 of Article 94 of the Constitution); therefore, it is evident that, while preparing a draft state budget, it must also invoke the laws that affect the amount of planned state revenue and expenditure. As held in the Constitutional Court's ruling of 14 January 2002, a draft state budget prepared by the Government must provide for funds necessary for the implementation of laws.

Since the Government, when preparing a draft state budget, and the Seimas, when considering and approving it, are bound by valid laws that affect the amount of planned state revenue and expenditure and, at the same time, have the duty to predict the tendencies in the development of the economy of the state, to assess the needs and possibilities of society and the state, it may become necessary to amend such laws correspondingly. It needs to be noted that, if amendments to such laws established certain duties or limitations with respect to persons, regard must be paid to the constitutional requirement to provide for a sufficient *vacatio legis*, i.e. enough time should be left before the entry into force of those amendments

(beginning of the application thereof) so that the interested persons could properly prepare for them. In this context, it needs to be mentioned that, in the course of making amendments (establishing new taxes, increasing the existing ones, etc.) exerting a decisive influence on the state budget revenue, this fact is of special importance, since a sufficient *vacatio legis* in the sphere of tax law is an important guarantee that persons (first of all, taxpayers) would be able not only to familiarise themselves with new requirements of tax laws in advance, but also to adapt their property interests and perspectives of economic activity to the said requirements. Thus, while preparing a draft state budget and considering it, it is necessary, among other things, to assess whether, prior to the approval of the state budget at the Seimas, the respective amendments should be made to tax laws and other laws that affect state revenue and expenditure where the constitutional requirement for a sufficient *vacatio legis* is applicable to the entry into force of such laws.

All this implies that, when account is taken of the constitutional principle of responsible governance, the preparation of a draft state budget should be started on the day that would make it possible, if need arises, to adopt the necessary amendments of the aforesaid laws on time. A deviation from these requirements might be allowed only in exceptional circumstances if this is justified by an important public interest.

The expenditure established by means of laws may not be reduced as long as these laws are not altered (Paragraph 2 of Article 131 of the Constitution)

The Constitutional Court's ruling of 15 February 2013

In the course of preparing, considering, and approving a draft state budget, the requirements stemming from the prohibition, which is consolidated in Paragraph 2 of Article 131 of the Constitution, against reducing the expenses provided for by means of laws as long as the said laws are not amended, and from the constitutional concept of such laws, are also binding on the Government and the Seimas.

In its ruling of 14 January 2002, when interpreting Paragraph 2 of Article 131 of the Constitution, the Constitutional Court, *inter alia*, held the following:

- the state revenue and expenditure planned for the budget year must be provided for only in the state budget approved by means of law; the provision that the expenditure established by means of laws may not be reduced as long as these laws are not amended may not be interpreted as making it possible to provide for such funding of certain needs that is not included in the law on the state budget of the given year;

- the laws specified in Paragraph 2 of Article 131 of the Constitution, which provide for certain expenditure, are not laws that may substitute for or change the law on the state budget; the aforesaid laws are not allowed to regulate the relationships that the Constitution permits regulating only by the law on the state budget; the aforesaid laws create the obligation to ensure the succession of the relationships connected with the state budget each budget year and the financial continuity when the persistent pursuit of certain public objectives (special, long-term, strategic) requires more funds than it is possible to allocate in one budget year;

- the laws specified in Paragraph 2 of Article 131 of the Constitution, which provide for certain expenditure, are an exception rather than a rule; non-state-budget laws can provide only for expenditure necessary in order to achieve a defined, generally important objective over a certain period of time established by means of a law, provided these needs cannot be satisfied in one budget year; however, such laws may not provide for funds necessary for the execution of routine functions of the state or for funds necessary to finance the everyday needs of society.

The process of the state budget in the year of the election of the Seimas

The Constitutional Court's ruling of 15 February 2013

... under the Constitution, the Seimas considers the draft state budget prepared by the Government and approves it by means of a law before the start of the new budget year. It needs to be noted that, under the Constitution, members of the Seimas are elected for a four-year term (Paragraph 1 of Article 55); a

regular election to the Seimas is held on the year of the expiry of the powers of the members of the Seimas on the second Sunday of October (Paragraph 1 of Article 57 (wording of 13 July 2004)); the term of powers of the members of the newly elected Seimas is begun to be counted from the beginning of its first sitting, whereas the term of powers of the previously elected members of the Seimas expires (Paragraph 1 of Article 59); the Government returns its powers to the President of the Republic after the election of the Seimas (Paragraph 4 of Article 92) and later, after a new Government is formed, resigns (Item 4 of Paragraph 3 of Article 101); a new Government receives the powers to act after the Seimas gives assent to its programme (Paragraph 5 of Article 92); the Government is jointly and severally responsible to the Seimas for the general activities of the Government (Paragraph 1 of Article 96 of the Constitution).

Thus, the constitutional regulation of the state budget process and the constitutional regulation of the time of the election of the Seimas creates the preconditions, in the year when the election to the Seimas takes place, for a newly elected Seimas and the Government, which is responsible to the Seimas and receives the powers to act after the Seimas gives assent to its programme, to engage in the state budget process that has already started.

[...]

When the provision of Item 14 of Article 67 of the Constitution, whereby the Seimas approves the state budget, and the provision of Paragraph 1 of Article 131 thereof, whereby the Seimas considers and approves the draft state budget by means of a law before the start of the new budget year, are interpreted in conjunction with the provision of Paragraph 1 of Article 57 (wording of 13 July 2004) thereof, according to which a regular election to the Seimas is held in the year of the expiry of the powers of the members of the Seimas on the second Sunday of October, it needs to be noted that it is necessary to establish in laws and the Statute of the Seimas such a legal regulation that, in the year when a new Seimas is elected, would create the conditions for implementing the constitutional powers of the Seimas to consider and approve the draft state budget, thus securing the possibility for the political forces that have won the election to the Seimas to implement, in reality, their programmes, which acquire the legal meaning only when the Seimas approves the programme of the Government by its resolution.

In addition, the Constitution, *inter alia*, Paragraph 1 of Article 57 (wording of 13 July 2004), Item 7 of Article 67, Paragraph 5 of Article 92, Item 4 of Article 94, and Paragraph 1 of Article 131 thereof, means that a legal regulation should also create the conditions for the new Government in order that it would implement its constitutional powers to draft the state budget.

... the Government, when implementing its constitutional competence, must present a draft state budget to the Seimas not later than 75 days before the end of the budget year. Thus, there can also arise such a situation where a draft state budget for the subsequent year would be prepared and approved before the beginning of the new term of office of the Seimas (thus, also before the new Government is granted the powers to act); however, even in such a case, it is necessary to ensure the possibility for the Seimas of the new term of office and the new Government responsible to the Seimas to implement their constitutional powers related to preparing, considering, and approving the state budget, thus securing the possibility for the political forces that have won the election to the Seimas to implement, in reality, their programmes, which acquire the legal meaning after the Seimas approves the programme of the Government by its resolution.

Deviations from the constitutional requirements for the adoption and entry into force of laws affecting the revenue and expenditure of the state budget upon the emergence of a particularly difficult economic and financial situation in the state; the duty of the legislature, before approving the state budget for a subsequent year, to reassess the actual economic and financial situation in the state

The Constitutional Court's ruling of 15 February 2013

The Constitutional Court has noted that neither the Government, which, under the Constitution, has the powers to execute the state budget, nor the Seimas, which, under the Constitution, approves the state

budget by means of a law, may refrain from reacting to such an essential change in the economic and financial condition of the state where, due to special circumstances (economic crisis, a natural disaster, etc.), a particularly difficult economic and financial situation occurs in the state; upon the emergence of a particularly difficult economic and financial situation in the state, there may be difficulties in collecting the revenue provided for in the law on the state budget (and on municipal budgets); thus, the required funds would not be obtained for financing certain needs provided for in the law on the state budget (and on municipal budgets) (*inter alia*, the decision of 13 November 2007, the ruling of 11 December 2009, and the decision of 20 April 2010).

It needs to be noted that possible deviations from the constitutional requirements established for the adoption and entry into force of the laws that affect the state budget and its revenue and expenditure, *inter alia*, from the constitutional principles of a state under the rule of law and responsible governance, *inter alia*, from the requirement that the amendments of the laws that affect the state budget and its revenue and expenditure be adopted before the Seimas approves the state budget, and from the requirement for providing for a sufficient *vacatio legis*, may be constitutionally justifiable on the grounds of the aim to ensure an important public interest – to guarantee the stability of public finances, not to allow the rise of an excessive budget deficit in the state due to a particularly difficult economic and financial situation because of the economic crisis – determining the necessity of urgent and effective decisions.

The Constitutional Court has held that the constitutional institution of a budget year gives rise to the duty of the legislature, in the course of deliberating and approving the state budget for a subsequent year, to reassess the actual economic and financial situation in the state and to decide whether the said situation is still a particularly difficult one, *inter alia*, whether the collection of the state budget revenue is still disordered to the extent that, due to this, the state is unable to perform the obligations undertaken by it (decision of 20 April 2010 and the ruling of 6 February 2012). While submitting a draft budget to the Seimas, the Government must substantiate the revenue and allocations indicated therein with the evaluation of the needs and possibilities of the state and society; this information must be public (ruling of 14 January 2002). Among other things, this means that society must be presented with concrete criteria upon which the assessment of the economic and financial situation of the state is based, determining the planning of the state budget revenue and expenditure and a possible need correspondingly to amend the laws that affect the revenue and expenditure, especially the laws establishing obligations of and limitations upon persons.

In this context, it needs to be noted that, under the Constitution, if a particularly difficult economic and financial situation in the state is long-term and continues for more than one year, there is no tolerance for the fact that, in the course of adopting the laws that affect the state budget revenue and expenditure, the aforementioned requirements, which arise from the Constitution, for the adoption and entry into force of these laws would be disregarded by justifying this by the necessity to adopt urgent decisions in order to handle the consequences of the economic crisis.

The constitutional duty to pay taxes

The Constitutional Court's ruling of 15 February 2013

The duty to pay taxes is a constitutional duty (*inter alia*, the rulings of 10 July 1997 and 24 January 2006). It needs to be noted that, when establishing such a duty by means of a law, regard must be paid to the Constitution, *inter alia*, the constitutional principles of justice, proportionality, legal certainty, and the protection of the legitimate expectations of persons.

... the persons who, under the Constitution, must pay taxes established by means of a law have the right to reasonably expect that, in the course of establishing or changing taxes, regard should be paid to the constitutional principle of a state under the rule of law, *inter alia*, the principles of legal certainty, legal security, and the protection of legitimate expectations, which implies the duty of the state to ensure the stability of the legal regulation by which taxes are established, as well as to protect and respect the legitimate interests and legitimate expectations of taxpayers.

The reduction of the financing of the areas funded from the funds of the state budget and municipal budgets upon the emergence of a particularly difficult economic and financial situation in the state

The Constitutional Court's ruling of 5 March 2013

... the constitutional imperatives of a state under the rule of law, justice, proportionality, the equality of rights, and social solidarity mean, *inter alia*, that the burden of an economic and financial crisis should be evenly and proportionately shared by all society (ruling of 6 February 2012). As a rule, in the event of a particularly difficult economic and financial situation, the budgetary financing of all institutions exercising state power, as well as the financing of various areas financed from the funds of the state budget and municipal budgets, should be revised and reduced (rulings of 28 March 2006 and 22 October 2007).

The concept of the state budget

The Constitutional Court's ruling of 5 July 2013

The state budget is a plan of the state revenue and expenditure (allocations) for a specific period, i.e. a financial plan of the state, according to which public funds are redistributed; in the legal sense, the state budget is a law, by means of which a plan of the state revenue and expenditure (allocations) for a budget year is approved (*inter alia*, the ruling of 14 January 2002 and the decision of 13 November 2007). The funds of the budget of the state, as the organisation of all society and as the organisation that is obliged to act in the interests of all society so that social harmony is ensured, must be allocated for the performance of various functions of the state and the provision of public services (ruling of 16 May 2013).

Taxes; the powers of the legislature to establish taxes, tax exceptions, and tax concessions

The Constitutional Court's ruling of 22 September 2015

The Constitutional Court has held that taxes form an essential part of the financial system of the state and that they constitute the main part of the revenue of the state budget (*inter alia*, the rulings of 15 March 2000 and 5 July 2013) and are one of the primary conditions for the existence of the state (rulings of 9 October 1998 and 5 July 2013). The establishment of taxes is aimed at receiving revenue to perform the functions of the state (municipality) and to meet the public needs of both society and the state (rulings of 17 November 2003 and 5 July 2013). When taxes are not paid or are overdue, the state (municipal) budget does not receive part of its revenue and the possibilities for the state (municipality) to perform the functions established for it are limited (rulings of 10 July 1997, 17 November 2003, and 5 July 2013). By means of taxes, economic and social processes are regulated, useful economic efforts are encouraged, and the priorities of economic development are supported (ruling of 17 November 2003). Tax relationships are a matter of regulation by public law; tax relationships are legal relations of an authoritative nature between taxpayers and state institutions; the decisions (orders) adopted by state institutions are obligatory to taxpayers (rulings of 17 November 2003 and 12 February 2010).

The Constitutional Court also noted in its acts that taxes and other compulsory payments are compulsory and unrequited payments of a certain size that are established by means of a law and made by legal and natural persons to the state (municipal) budget in due time (*inter alia*, the rulings of 24 January 2006 and 3 April 2015). State taxes and other compulsory payments are a pecuniary obligation of legal subjects to the state; under the Constitution, only the Seimas may establish state taxes and other compulsory payments and it may establish them only by means of a law, which is an important guarantee of the protection of the rights of persons (rulings of 3 June 2002 and 3 April 2015). When imposing taxes, the legislature must pay regard to the norms and principles of the Constitution, *inter alia*, the constitutional principles of justice, reasonableness, and proportionality (ruling of 22 December 2006). The Constitutional Court has held on more than one occasion that such essential elements of tax as the object of tax, the subjects of tax relationships, their rights and duties, the sizes (rates) of tax, the time limits of payment, tax exceptions and tax concessions, fines and late payment interest should be established by means of a law.

In the context of the constitutional justice case at issue, it should be noted that the establishment of tax exceptions or tax concessions is a matter of social and economic expediency that is within the competence of the legislature. Under the Constitution, the legislature has the discretion to establish, by means of a law, tax exceptions or tax concessions by taking account of the resources of the state and society, the material and financial possibilities, and the priorities of economic and social policy and by paying regard to other important factors. In doing so, the legislature may not violate the norms or principles of the Constitution.

[...]

In this ruling of the Constitutional Court, it has been mentioned that such essential elements of tax as the object of tax, the subjects of tax relationships, their rights and duties, the sizes (rates) of tax, the time limits of payment, tax exceptions and tax concessions should be established by means of a law.

Consequently, all conditions for imposing a certain tax should be established by means of a law. The law providing for the conditions of a certain tax must not contain any provisions granting the discretion to the state institutions administering taxes to decide whether a concrete taxpayer has to pay the tax or may be exempted from it even when certain circumstances are taken into account, as, for instance, the financial situation of the family of the taxpayer, the ability of such a family to pay, the number of under-age children raised in the family, etc. Otherwise, should the state institutions administering taxes have such discretion, the essence of a tax as a law-established unrequited compulsory payment by legal and natural persons during the established period to the state budget would be denied.

Decisions concerning the basic property liabilities of the state are adopted by the Seimas (Paragraph 1 of Article 128 of the Constitution)

The Constitutional Court's ruling of 29 September 2015

In the Constitutional Court's ruling of 15 February 2013, it is noted that, under the Constitution, while preparing a draft state budget, the Government and, while considering and approving a draft state budget, the Seimas must follow the laws that presuppose a certain amount of estimated state revenue and expenditure, including the laws determining state financial obligations.

In this context, it should be emphasised that, under Paragraph 1 of Article 128 of the Constitution, decisions concerning the basic property liabilities of the state are adopted by the Seimas upon the proposal of the Government.

... under the Constitution, *inter alia*, Paragraph 1 of Article 128 thereof, the decisions that have an essential influence on the amount of the expenditure of the state provided for in the state budget must be adopted and consolidated in laws by the Seimas. Otherwise, if decisions affecting a significant part of the expenditure of the state budget were consolidated in acts adopted by other state institutions, the preconditions would be created for the emergence of the situations where the Seimas, being incapable of changing such situations, would have to approve the state budget without being able to affect its content to particular significant extent. This would mean that the possibilities of the Seimas to efficiently fulfil its constitutional budgetary function are restricted and that its role in forming the state budget is a mere formality and this would not be in line with the purpose and essence of the constitutional powers of the Seimas in the sphere of state finances.

In view of the fact that the funds of the state (municipal) budget allocated for the pay for work of the employees of establishments through which various functions of the state are implemented and which are financed from that budget represent a significant part of the expenditure of the state (municipal) budget, it should be held that the financial liabilities of the state that determine the said expenditure and are linked to the work pay of these employees must be considered the basic property liabilities of the state and, under Paragraph 1 of Article 128 of the Constitution, decisions concerning these liabilities must be adopted by the Seimas upon the proposal of the Government. Therefore, the most important elements (which have essential influence on the amount of the expenditure of the state (municipal) budget) of the work pay of the employees of establishments financed from the said funds must be established by means of a law.

The powers of the Seimas to supervise the execution of the state budget (Item 14 of Article 67 of the Constitution)

The Constitutional Court's ruling of 16 May 2019

... Item 14 of Article 67 of the Constitution prescribes that the Seimas, *inter alia*, supervises the execution of the state budget. In its ruling of 13 May 2004, the Constitutional Court held that this provision of Item 14 of Article 67 of the Constitution is concretised in Item 4 of Article 94 of the Constitution, which, *inter alia*, provides that the Government submits to the Seimas a report on the execution of the budget; thus, under the Constitution, the Seimas has the powers to approve this report.

It should be noted that, under the Constitution, the Government has the exclusive powers to execute the state budget (Item 4 of Article 94). As noted in the Constitutional Court's ruling of 14 January 2002, the provision of Item 4 of Article 94 of the Constitution, whereby the Government executes the state budget, means that the Government has the duty to ensure that the state budget receives the specified revenue and that these funds are transferred to the entities specified in the law on the state budget. It should also be noted that, under the Constitution, the Seimas exercises parliamentary control over the Government (ruling of 24 December 2002).

Thus, the powers of the Seimas, consolidated in Item 14 of Article 67 of the Constitution, to supervise the execution of the state budget mean not only that the Seimas, pursuant to Item 4 of Article 94 of the Constitution, approves a report on the execution of the budget, but also that the Seimas supervises the execution of the state budget through the forms of parliamentary control over the Government, which are established by the Constitution.

In this context, it should be noted that the National Audit Office is a state institution exercising economic and financial control, which supervises the lawfulness of the possession and use of state-owned property and the execution of the state budget; it is accountable directly to the Seimas, which exercises parliamentary control over this institution (ruling of 6 December 1995). Thus, the powers of the Seimas, consolidated in Item 14 of Article 67 of the Constitution, to supervise the execution of the state budget also mean that the Seimas supervises the execution of the state budget through the forms of parliamentary control over the State Audit Office, which are established by the Constitution.

It should also be noted that, in exercising its powers under Item 14 of Article 67 of the Constitution to supervise the execution of the state budget, the Seimas, having regard to the Constitution, *inter alia*, the constitutionally consolidated principles of responsible governance and a state under the rule of law, may also exercise parliamentary control over the institutions that have been founded by means of laws, are accountable to the Seimas, and are independent managers of state budget appropriations.

11.2. THE POSSESSION, USE, AND DISPOSAL OF STATE-OWNED PROPERTY.
PROPERTY THAT BELONGS BY RIGHT OF EXCLUSIVE OWNERSHIP TO THE REPUBLIC
OF LITHUANIA

The constitutional grounds for possessing, using, and disposing of state-owned property (Paragraph 2 of Article 128 of the Constitution)

The Constitutional Court's ruling of 30 September 2003

Paragraph 2 of Article 128 of the Constitution provides that the procedure for the possession, use, and disposal of state-owned property is established by law.

[...]

The content of the provisions of Paragraph 2 of Article 128 of the Constitution should be interpreted in a systemic manner, in the context of the entire constitutional regulation, by taking account, *inter alia*, of the following: Paragraph 2 of Article 23 of the Constitution, according to which the rights of ownership are protected by law; Paragraph 1 of Article 46, which provides that the economy of Lithuania is based on the right of private ownership, freedom of individual economic activity, and economic initiative;

Paragraph 3 of the same article, which states that the state regulates economic activity so that it serves the general welfare of the nation; Paragraph 4 of the same article, which stipulates that the law prohibits the monopolisation of production and the market, and protects freedom of fair competition; the provisions of Article 47 of the Constitution, which consolidate the right of exclusive ownership of the state of certain objects and establish what objects may belong to foreign subjects by right of ownership; and the provision of Paragraph 1 of Article 134 of the Constitution, whereby the National Audit Office supervises the lawfulness of the possession and use of state-owned property and the execution of the state budget.

The provisions of Paragraph 2 of Article 128 of the Constitution are inseparable from the provisions of the Constitution that consolidate such constitutional values as the independence of the state and the integrity of its territory, the security of the state, the welfare of the nation, public order and justice. They are also inseparable from the provisions of the Constitution that lay down various constitutional obligations of the state: family, motherhood, fatherhood, and childhood are under the protection and care of the state (Article 38 of the Constitution); the state takes care of families raising and bringing up children at home, and renders them support according to the procedure established by law (Article 39 of the Constitution); education at state and municipal schools of general education, vocational schools, and schools of further education is free of charge (Paragraph 2 of Article 41 of the Constitution); citizens who are good at their studies are guaranteed education at state schools of higher education free of charge (Paragraph 3 of Article 41 of the Constitution); the state supports culture and science, and takes care of the protection of Lithuanian historical, artistic, and other cultural monuments, as well as other culturally valuable objects (Paragraph 2 of Article 42 of the Constitution); ethnic communities are provided support by the state (Paragraph 2 of Article 45 of the Constitution); the state guarantees its citizens the right to receive old-age and disability pensions, as well as social assistance in the event of unemployment, sickness, widowhood, the loss of the breadwinner, and in other cases provided for by law (Article 52 of the Constitution); the state takes care of the health of people and guarantees medical aid and services for a person in the event of sickness (Paragraph 1 of Article 53 of the Constitution); the state promotes the physical culture of society and supports sport (Paragraph 2 of Article 53 of the Constitution); the state takes care of the protection of the natural environment, wildlife and plants, individual objects of nature, and areas of particular value, and supervises the sustainable use of natural resources, as well as their restoration and increase (Paragraph 1 of Article 54 of the Constitution); the state takes care of and provides for servicemen who lose their health during military service, as well as for the families of servicemen who lose their lives or die during military service (Paragraph 1 of Article 146); the state also provides for citizens who lose their health while defending the state, as well as for the families of citizens who lose their lives or die in defence of the state (Paragraph 2 of Article 146 of the Constitution); as well as other provisions of the Constitution.

Paragraph 2 of Article 128 of the Constitution should also be interpreted while taking account of the constitutional principle of a state under the rule of law and the provision of Paragraph 2 of Article 5 of the Constitution, whereby the scope of powers is limited by the Constitution.

Ownership includes obligations (rulings of 21 December 2000 and 14 March 2002). This constitutional imperative is addressed not only to the subjects of the private ownership right, but also to the state and self-government institutions and officials that have the powers to adopt decisions concerning the possession, use, and disposal of property that belongs to the state by right of ownership. Consequently, it is not permitted to establish such a legal regulation according to which property that belongs to the state by right of ownership would be possessed, used, and disposed of in such a manner that the interests of only one social group or separate persons would be satisfied and where this property would not serve the public interest, the need of society, or the welfare of the nation. This welfare may not be understood only in the material (or financial) sense (rulings of 13 February 1997 and 6 October 1999).

State-owned property is not an objective in itself – it should give benefit to society. The social function of state-owned property should be emphasised. While acting in the interests of society, state institutions must serve the common good of the nation. According to Paragraph 1 of Article 134 of the Constitution, state-owned property must be possessed and used lawfully; this is supervised by the National Audit Office.

In the context of the case at issue, it needs to be noted that the provision of Paragraph 2 of Article 23 of the Constitution, whereby the rights of ownership are protected by law, also means that laws must protect the rights of all owners; thus, laws must also protect the right of ownership of the state as the organisation of all society.

The striving for an open, harmonious, and just civil society, which is consolidated in the Preamble to the Constitution, the constitutional principle that ownership includes obligations, Paragraph 2 of Article 23 of the Constitution, according to which the rights of ownership are protected by law, the provision of Paragraph 2 of Article 128 of the Constitution, whereby the procedure concerning the possession, use, and disposal of state-owned property is established by law, as well as other provisions of the Constitution, give rise to the requirement that state-owned property must be used sparingly and not wasted. Such property must be managed rationally.

Under the Constitution, the legislature is obligated to establish, by means of laws, such a legal regulation governing the possession, use, and disposal of state-owned property that would ensure that this property would be used for the needs of society, as well as would serve the public interest and the welfare of the nation. When establishing the said legal regulation, the legislature must observe the Constitution and not violate the constitutional rights of the state as a subject of the right of ownership or the rights of other persons.

The fact that, under the Constitution, state-owned property must be used sparingly and not wasted does not mean that such property may not be transferred into the ownership of other subjects (except ownership objects that belong to the Republic of Lithuania by right of exclusive ownership).

The transfer of property (including its privatisation) that belongs by right of ownership to the state into the ownership of other subjects may be constitutionally justified only if this gives more benefit to society and seeks to satisfy significant and constitutionally justifiable needs/interests of society. Such transfer, both repayable and free of charge, would be constitutionally unjustified if the said transfer inflicted evident harm on society and violated the rights of other persons.

The provision of Paragraph 2 of Article 128 of the Constitution, under which the procedure for the possession, use, and disposal of state-owned property is established by law, means that the transfer of property that belongs by right of ownership to the state into the ownership of other subjects must be based on laws, that laws must, *inter alia*, establish which state institutions have the powers to adopt decisions concerning the transfer of property that belongs by right of ownership to the state into the ownership of other subjects, and that laws must establish the powers of these institutions to transfer the said property, as well as the conditions and procedure for the transfer of the said property. It is not permitted to establish any such a legal regulation according to which property that belongs to the state by right of ownership would be transferred into the ownership of other subjects in order to satisfy the interests or needs of only one social group, or those of individual persons, if this does not comply with the need of society, the public interest, or does not serve the welfare of the nation. On the other hand, the legal regulation governing the transfer of state-owned property into the ownership of other subjects may not be such that limitations on the right of state institutions to dispose of this property would interfere with the implementation of the functions established for them.

It also needs to be noted that the legislature, while observing the Constitution and taking account of various factors, may establish the regime (conditions and procedure for the use) of property that is subject to transfer into the ownership of other subjects in order to further ensure the interests of society, the welfare of the nation and to implement the values consolidated in the Constitution.

It has been mentioned that the Constitution gives rise to the requirement that state-owned property must be used sparingly, not wasted, and managed rationally.

It needs to be noted that such situations may also arise where, for certain reasons, the state temporarily in fact possesses and uses such property that does not belong to it by right of ownership.

Therefore, if there arises such an objective situation where the state temporarily in fact possesses and uses property that does not belong to it by right of ownership, this property must also be possessed and

used by observing the same constitutional requirements when possessing and using property that belongs to the state by right of ownership, i.e. it must also be used sparingly, not wasted, and managed rationally.

This constitutional imperative is also applicable to such property that is temporarily in fact possessed and used by the state where the said property was illegally nationalised or expropriated in other unlawful ways by the occupation government and the rights of ownership to which may be restored according to the law.

The right of exclusive ownership of the Republic of Lithuania; cultural objects of state importance; the nationalisation of cultural objects of national importance (Paragraph 1 of Article 47 (wording of 23 January 2003) of the Constitution)

The Constitutional Court's ruling of 8 July 2005

The provision of Paragraph 2 of Article 128 of the Constitution, whereby the procedure for the possession, use, and disposal of state-owned property is established by law, should also be interpreted in the context of the provision of Paragraph 1 of Article 47 of the Constitution, under which the subsurface, as well as the internal waters, forests, parks, roads, and historical, archaeological, and cultural objects of state importance, belong by right of exclusive ownership to the Republic of Lithuania.

It should be noted that, despite several amendments to Article 47 of the Constitution, the aforementioned provision was contained in the Constitution all the time (Paragraph 3 of Article 47 of the Constitution (wording of 25 October 1992), Paragraph 4 of Article 47 of the Constitution (wording of 20 June 1996), and Paragraph 1 of Article 47 of the Constitution, which is in force at present (wording of 23 January 2003)) and it has not been amended.

... while paying regard to the constitutional concept of culture (comprising ... quite diverse values held and fostered by the Nation and separate communities), the notion of cultural objects of state importance, which is used in Paragraph 1 of Article 47 of the Constitution, is general; it also comprises historical and archaeological objects of state importance, but it is not limited to them; the said notion is much broader. This notion comprises diverse property – real property, movable property, property that is categorised as belonging to the cultural heritage and declared that of state importance according to the established procedure. Moreover, the other objects specified in Paragraph 1 of Article 47 of the Constitution (for example, parks of state importance) may also be considered cultural objects of state importance.

Culture (when this notion is used in its constitutional sense) is always related to valuable objects. The Constitution does not create the preconditions for declaring every cultural object that could be categorised as belonging to the cultural heritage, even when such a cultural object is certainly of great value, as one of state importance. It is allowed to declare not any cultural objects categorised as belonging to cultural heritage to be cultural objects of state importance, but only such cultural objects whose continuous value and importance is so great and the necessity to preserve them for future generations is so pressing that failure to declare them to be of state importance would pose a threat to their preservation and would not ensure access to them for the public.

It should be noted that declaring cultural objects to be of state importance implies a special regulation of the relationships connected with the maintenance, protection, and use of such cultural objects. When taking account of the special continuous value of the said cultural objects, of the importance and necessity to preserve them to the posterity, a special, individual legal regime must be established by means of a law in connection with such cultural objects if compared with other objects.

... freedom of access to culturally valuable objects – freedom of every individual to use the existing culturally valuable objects – is consolidated in the Constitution. Therefore, the legal regime established with regard to cultural objects of state importance must be such that would ensure access to the aforementioned cultural objects for the public and, at the same time, would not inflict damage on these valuable objects or deny other constitutional values.

The legal regime (established by means of a law) of cultural objects of state importance may comprise, *inter alia*, various prohibitions, obligations, other restrictions or limitations related to the possession, use,

or disposal of these cultural objects. This legal regime may be differentiated by taking account of the character (*inter alia*, the fact whether the respective cultural objects are real property or movable property), features, and other factors of cultural objects.

The state (its institutions or officials) has the duty to control how the aforementioned legal regime is observed.

The provision of Paragraph 1 of Article 47 of the Constitution, whereby the subsurface, as well as the internal waters, forests, parks, roads, and historical, archaeological, and cultural objects of state importance, belong by right of exclusive ownership to the Republic of Lithuania, means that the specified objects may belong by right of ownership solely to the state, save the exceptions that stem directly from the Constitution. The state (its institutions or officials) may not adopt any such decisions that could become the basis for transferring these objects from the ownership of the state into the ownership of other subjects (save the exceptions permitted by the Constitution).

[...]

... the provision of Paragraph 1 of Article 47 of the Constitution, whereby the subsurface, as well as the internal waters, forests, parks, roads, and historical, archaeological, and cultural objects of state importance, belong by right of exclusive ownership to the Republic of Lithuania, should also be interpreted in the context of Article 23 of the Constitution. ...

The Constitution, which consolidates the human rights and freedoms (*inter alia*, freedom of culture and the right of ownership) and recognises their innate nature, tolerates a situation where the objects of culture of even the greatest continuous value and obviously having state or national importance belong by right of ownership not only to the state, but also to other subjects, of course, provided that these other subjects have legally acquired particular cultural objects.

There are different ways how the aforementioned cultural objects of state importance (and various other objects indicated in Paragraph 1 of Article 47 of the Constitution, except the subsurface) may become the ownership of other persons, but not that of the state. A person (artist) may create them himself/herself and become their owner. A person may acquire such cultural objects by means of transactions from another person – their legal owner; besides, the other party of such a transaction need not necessarily be subject to the jurisdiction of the Republic of Lithuania. It should also be mentioned that, after the restoration of the independence in Lithuania, the process of restitution was launched (and is not over yet) – the existing real property that was nationalised and expropriated in any other unlawful manner by the occupation government is still being restituted to the former owners; thus, cases are possible where such property (for example, buildings) that could be categorised as belonging to cultural objects of state importance is also subject to restitution to the former owners. Also, such situations are possible where certain property that legally belongs by right of ownership not to the state, but to another legal or natural person, due to its great permanent value and importance for future generations, is or will be declared a cultural object of state importance in accordance with the established procedure. According to the Constitution, in all these and other cases where cultural objects of state importance belong by right of ownership not to the state, but to other persons, the state (its institutions or officials) must tolerate this. Otherwise, the constitutional imperative of an open, just, and harmonious civil society would be disregarded and the innate human rights and freedoms, as well as other values consolidated, protected, and defended by the Constitution, would be violated.

On the other hand, the institution of expropriation (*eminent domain*) is also consolidated in the Constitution. Under Paragraph 3 of Article 23 of the Constitution, property may be taken only for the needs of society according to the procedure established by law and must be justly compensated for. The Constitutional Court, when interpreting, in the context of the problem of the ownership of cultural objects of state importance, Paragraph 4 of Article 47 of the Constitution (wording of 20 June 1996), the text of which corresponds to the text of the current Paragraph 1 of Article 47 of the Constitution (wording of 23 January 2003), has held: the Constitution does not reject the possibility of bringing separate cultural objects of state importance into the ownership of the state; this would depend on the public significance and value of particular objects, as well as on the necessity to guarantee the possibility of its endurance and

preservation for future generations; such nationalisation of valuables of culture must be carried out only pursuant to the requirements of Paragraph 3 of Article 23 of the Constitution (ruling of 16 March 1999). It should be stressed that the nationalisation of cultural objects is possible only after declaring them to be of state importance in accordance with the established procedure. It should be noted that the nationalisation of such cultural objects of state importance that belong by right of ownership not to the state, but to other subjects, should be regarded as an exceptional measure.

[...]

When taking account of the special continuous value and significance of cultural objects of state importance, as well as the need to preserve them for future generations, the state has the constitutional duty to take care of these objects and to protect them. It should be noted that the provision of Paragraph 2 of Article 42 of the Constitution, whereby the state supports culture and science, and takes care of the protection of Lithuanian historical, artistic, and other cultural monuments, as well as other culturally valuable objects, implies that, in cases where certain cultural objects of state importance (and various other objects indicated in Paragraph 1 of Article 47 of the Constitution, except the subsurface) belong by right of ownership not to the state, but to other persons, the state is not relieved from the duty to ensure the protection of the said objects and to take care of them.

In this context, it needs to be emphasised that the constitutional status of cultural objects of state importance implies the duty of the state to keep records of cultural objects of state importance, *inter alia*, the duty of the legislature to set, by means of a law, a list of cultural objects of state importance and to mark separately which cultural objects of state importance belong to the state and which of them belong to other owners. If necessary, such a list must be revised in accordance with the established procedure by taking into account the fact whether the need exists during a particular phase of the development of society and the state to include additional cultural objects in the said list (and/or the need exists to exclude certain cultural objects from the aforementioned list). It should be stressed that the inclusion of cultural objects of state importance in the aforementioned list may not depend on the fact whether particular cultural objects belong by right of ownership to the state or to other legal or natural persons. It should also be stressed that the recognition that particular cultural objects that belong by right of ownership not to the state, but to other persons, are of state importance does not mean their nationalisation.

[...]

The specified requirements that stem from the Constitution and are related to keeping records of cultural objects of state importance and the duty of the state to take care of cultural objects of state importance and to ensure their protection (irrespective of the fact whether the aforementioned cultural objects belong by right of ownership to the state or to other legal or natural persons) are also *mutatis mutandis* applicable to the other objects indicated in Paragraph 1 of Article 47 of the Constitution.

[...]

The state (its institutions or officials), when exercising, under the Constitution, the powers to control how the legal regime established in regard to cultural objects of state importance is observed, also has the powers to control how the owners to whom these objects belong by right of ownership and the state or municipal institutions that possess these objects by right of trust or by other (non-property) right observe this legal regime.

[...]

... the material basis for performing the function of supporting and protecting culture, which is transferred to municipalities (to the established extent), is comprised of both the property needed for the performance of this function where such property belongs by right of ownership to municipalities and the property that belongs by right of ownership to the state, but is possessed by right of trust or by other (non-property) right by municipalities.

It should be noted that property that belongs by right of ownership to a certain municipality or property that belongs by right of ownership to the state but is possessed by right of trust by a municipality may be a cultural object of state importance or may become (be declared) such a cultural object in future. Such cultural objects must be included in a list (approved by means of a law) of cultural objects of state

importance and such cultural objects may become subject to the legal regime established by means of a law with regard to cultural objects of state importance; the said legal regime may include, *inter alia*, various prohibitions, obligations, other restrictions, or limitations concerning the possession, use, and disposal of these cultural objects.

It needs to be emphasised that, in order to more efficiently guarantee the function of supporting and protecting culture, which is consolidated in Paragraph 2 of Article 42 of the Constitution, it is possible, by paying regard to the Constitution, to nationalise cultural objects of state importance that belong to municipalities by right of ownership.

The exclusive ownership of the Republic of Lithuania (objects of nature of state importance) (Paragraph 1 of Article 47 (wording of 23 January 2003) of the Constitution) (also see 2. The constitutional status of persons, 2.2. Civil (individual) rights and freedoms, 2.2.5. The right of ownership, 2.2.5.3. Special objects of ownership, and 2.4. Economic, social, and cultural rights, 2.4.2. Social rights, 2.4.2.3. The right to a healthy environment)

The Constitutional Court's ruling of 14 March 2006

Under Paragraph 4 (wording 20 June 1996) of Article 47 of the Constitution and Paragraph 1 (wording 23 January 2003) of Article 47 of the Constitution, *inter alia*, internal waters, forests, and parks of state importance belong by right of exclusive ownership to the Republic of Lithuania.

This constitutional provision means that the specified objects can belong by right of ownership only to the state, save the exceptions that stem from the Constitution itself; the state (its institutions, officials) may not adopt any decisions that could become the basis for transferring these objects from the ownership of the state into the ownership of other subjects (save the exceptions permitted by the Constitution) (ruling of 8 June 2005).

On the other hand, the fact that, under the Constitution, certain objects of state importance belong by right of exclusive ownership to the Republic of Lithuania does not mean that particular objects that belonged by right of ownership to certain persons and were later declared to be of state importance must necessarily be taken into state ownership. In this context, it should be mentioned that, under Paragraph 3 of Article 23 of the Constitution, property may be taken only for the needs of society according to the procedure established by law and must be justly compensated for.

It needs to be emphasised that not every object (*inter alia*, an object of nature) that belongs by right of ownership to the state should be declared that of state importance. In addition, it needs to be noted that it is allowed to declare not any internal waters, forests, and parks as internal waters, forests, and parks of state importance, but only those whose continuous value is so high and the necessity to preserve them to the posterity is so pressing that, if they were not declared to be of state importance, a threat to their preservation would arise.

When taking account of the special continuous value of internal waters, forests, and parks of state importance and the necessity to preserve them to the posterity, the state is under the constitutional obligation to take care of these objects and preserve them.

The recognition that land, forests, parks, or water bodies, as well as those that are located in areas of particular value, are of state importance, implies a special legal regulation of the relationships connected with the supervision, protection, and use of such objects. When taking account of the special continuous value of the said objects and of the importance and necessity to preserve them to the posterity, a special and individual legal regime may be established by means of a law in connection with such objects if compared with other objects.

The protection of state-owned objects of nature that are located in areas of particular value (Paragraph 2 of Article 23, Paragraph 1 of Article 54, and Paragraph 2 of Article 128 of the Constitution)

The Constitutional Court's ruling of 14 March 2006

The provision of Paragraph 2 of Article 128 of the Constitution, whereby the procedure for the possession, use, and disposal of state-owned property is established by law, the principle of a state under the rule of law, which is consolidated in the Constitution, the constitutional principle that ownership includes obligations, Paragraph 2 of Article 23 of the Constitution, whereby the rights of ownership are protected by law, and other provisions of the Constitution give rise to the requirement that state property must be used sparingly and not wasted. State-owned property must be managed rationally.

Relating the said constitutional principles with the state duty, which is consolidated in Article 54 of the Constitution, to take care of the protection of the natural environment, individual objects of nature, and areas of particular value, it should be held that, if the objects of nature that are located in areas of particular value belong by right of ownership to the state, then, regardless of whether or not they are declared to be objects of state importance, they may be transferred into the ownership of other persons only in cases (and only in such a manner) where this is constitutionally justifiable. It needs to be mentioned that, *inter alia*, such a legal regulation whereby land, forests, parks, or water bodies that are located in areas of particular value and belong by right of ownership to the state may be transferred into the ownership of certain other subjects for no consideration or for an unreasonably small price, as well as such a legal regulation whereby land, forests, parks, or water bodies that are located in areas of particular value and belong by right of ownership to the state may be transferred into the ownership of other persons when the rights of ownership are restored to them in equivalent kind, i.e. when a person who did not have the ownership right to an object – land, forest, a park, or a water body – that is located in an area of particular value receives as ownership precisely such an object in kind, would lack the said constitutional grounds.

On the basis of the provision of Paragraph 2 of Article 23 of the Constitution, whereby the rights of ownership are protected by law, the provision of Paragraph 2 of Article 128 thereof, under which the procedure for the possession, use, and disposal of state property is established by law, the provision of Article 54 thereof, according to which the state takes care of the protection of the natural environment, wildlife and plants, individual objects of nature, and areas of particular value, as well as on the basis of other provisions of the Constitution, the conclusion should be drawn that the respective measures of protection, including all limitations and prohibitions regarding the right of ownership, must be established by means of a law.

The possession, use, and disposal of state-owned property

The Constitutional Court's ruling of 30 October 2008

Under the Constitution, the state is a subject of the right of ownership (rulings of 27 May 2002 and 30 September 2003). The Constitutional Court has held on more than one occasion that the state is the organisation of all society. When performing its functions, the state must act in the interests of society (rulings of 4 March 2003 and 13 December 2004).

The property that belongs to the state by right of ownership should be managed in such a way that it would serve the general welfare of the nation and the interest of society at large; state-owned property is one of the means for guaranteeing the public interest and social harmony; institutions of state power and other state institutions that are empowered to adopt decisions concerning the possession, use, and disposal of property that belongs to the state by right of ownership are not themselves the owners of that property – such property belongs to the entire state; therefore, all the state institutions that have the powers to adopt decisions concerning the possession, use, and disposal of property that belongs to the state by right of ownership must observe the norms and principles of the Constitution (ruling of 30 September 2003).

It needs to be noted that state institutions, when adopting decisions regarding the possession, use, and disposal of property that belongs to the state by right of ownership must follow the norms and principles of the Constitution and may not act *ultra vires*, i.e. by exceeding their powers, under any circumstances. If state institutions or officials act *ultra vires*, such acts may not be identified, without reservations, with acts of the state itself. ... if state officials, when acting *ultra vires*, commit a crime, this does not mean that such a criminal act committed by them may be identified with the action of (or the failure to act by) the state

itself and that the state, as the owner, may not recover the property that has been lost as a result of a crime committed by a state official.

The possession, use, and disposal of state-owned property (*inter alia*, the investment of state assets) (Paragraph 2 of Article 128 of the Constitution)

The Constitutional Court's ruling of 2 March 2009

Paragraph 2 of Article 128 of the Constitution provides that the procedure for the possession, use, and disposal of state-owned property is established by law. When interpreting this provision, the Constitutional Court has held that the transfer of property that belongs by right of ownership to the state into the ownership of other subjects must be based on laws, that laws must, *inter alia*, establish which state institutions have the powers to adopt decisions concerning the transfer of property that belongs by right of ownership to the state into the ownership of other subjects, and that laws must establish the powers of these institutions to transfer the said property, as well as the conditions and procedure for the transfer of the said property (rulings of 30 September 2003, 8 July 2005, 23 August 2005, 23 May 2007, and 23 November 2007). This is also applicable to the Government, which does not have the discretion to decide not to apply the provisions of a certain law regulating particular relationships, unless the non-application of a certain provision of such a law is *expressis verbis* provided for in laws (ruling of 23 May 2007).

It needs to be noted that the provision “the transfer of property that belongs by right of ownership to the state into the ownership of other subjects must be based on the law” of the official constitutional doctrine may not be interpreted as meaning that all relationships connected with the transfer of state-owned property into the ownership of other subjects should be regulated only by means of a law – the Government and other subjects of lawmaking, according to their competence, may also regulate these relationships by means of substatutory legal acts that are based on laws and do not compete with them (ruling of 23 November 2007).

When interpreting Paragraph 2 of Article 128 of the Constitution, the Constitutional Court has also held that state-owned property is not an objective in itself, but that it should give benefit to society, that it should be used sparingly, not wasted, and managed rationally; laws must protect the rights of ownership of all owners, including those of the state as the organisation of all society; under the Constitution, no such legal regulation is permissible whereby state-owned property is possessed, used, and disposed of in such a way that the interests or needs of only one social group or individual persons would be satisfied and this property would not serve the public interest, the needs of society, or the welfare of the Nation (where welfare may not be understood only in the material and financial sense) (rulings of 30 September 2003, 8 July 2005, 5 July 2007, 23 November 2007, and 20 March 2008). These constitutional imperatives are also applicable in the situations of the investment of state assets.

... under Paragraph 2 of Article 128 of the Constitution, the investment of state assets must be based on a law that must consolidate the following: the criteria and conditions for investing state assets as well as the subjects that have the right to adopt decisions on the investment of state assets. The establishment of the criteria of the investment of state assets is not an objective in itself – such criteria must be established that would ensure the public interest and the observance of the imperatives that stem from the Constitution, *inter alia*, Paragraph 2 of Article 128 thereof. The legislature is under the duty to establish such criteria of the investment of state assets that would permit, *inter alia*, differentiating the investment of state assets by taking account of the specificity of the invested assets and their significance for the general welfare of the nation, as well as of other constitutionally important circumstances. The fact that the criteria and conditions for investing state assets, as well as the subjects that have the right to adopt decisions on the investment of state assets, must be established only by means of a law does not mean that the Government and other law-making subjects may not, within their competence, also regulate the relationships connected with state property by means of substatutory legal acts (for example, establish the arrangements and procedures for investing state assets) that are based on laws and do not compete with them. The legislature may establish various ways of the investment of state assets. The Constitution also does not prohibit establishing such a way of the investment of state assets where the investment of state assets is made together with other

persons (person), *inter alia*, with a private person. When choosing the ways of investing state assets, the state must take account of the fact whether, upon choosing a certain way, the important and constitutionally justifiable needs and interests of society will be satisfied. The investment of state assets would be constitutionally unjustified if such investment inflicted evident harm on society or if the rights of other persons were violated. When regulating the relationships connected with the investment of state assets, the legislature must establish such a legal regulation that would ensure that the imperative of fair competition, which stems from Paragraph 4 of Article 46 of the Constitution, would not be violated or that no preconditions would be created for abuse in the course of investing state assets and administering invested state assets.

Privatising state (municipal) property

The Constitutional Court's ruling of 24 October 2012

... when concluding an agreement on the sale and purchase of a privatisation object that belongs to the state (municipality), the said agreement must provide for such conditions of this agreement and measures ensuring its implementation where the said conditions and measures would guarantee such a privatisation process that would be efficient and rational, would give benefit to society, and would ensure compliance with the principles of the equality of rights, the inviolability of property, proportionality, and the protection of legitimate expectations.

The transfer of state-owned property into the ownership of other subjects (*inter alia*, privatisation)

The Constitutional Court's ruling of 2 April 2013

Under the Constitution, the state, when regulating economic activity, must ensure that state property is managed in such a manner that there would be no contradiction to the requirement, consolidated in Paragraph 3 of Article 46 of the Constitution, that the state must regulate economic activity so that it serves the general welfare of the nation (rulings of 24 January 1996 and 2 March 2009).

[...]

The Constitutional Court has held on more than one occasion that it is not permitted to establish any such a legal regulation according to which property that belongs to the state by right of ownership would be transferred into the ownership of other subjects in order to satisfy the interests or needs of only one social group or separate persons where this would not serve the public interest, the needs of society, or the welfare of the nation (rulings of 30 September 2003, 8 July 2005, 5 July 2007, 23 November 2007, and 20 March 2008).

In the Constitutional Court's jurisprudence, it has been held on more than one occasion that the implementation of the public interest, as an interest of society recognised by the state and protected by law, is one of the most important conditions for the existence and evolution of society itself (*inter alia*, the rulings of 6 May 1997, 13 May 2005, 21 September 2006, and 6 January 2011).

The transfer of state-owned property into the ownership of other subjects (including privatisation) may be constitutionally justified only when this may provide larger benefits to society, when the purpose of such transfer is the satisfaction of important and constitutionally justifiable needs and interests of society; such transfer (both repayable and non-repayable) would be constitutionally unjustified if it inflicted evident harm on society and violated the rights of other persons (rulings of 30 September 2003, 8 July 2005, and 23 November 2007).

[...]

The legislature, when paying regard to the Constitution and taking account of various factors, may establish the regime (conditions and procedure for the use) of the property that is transferred into the ownership of other subjects in order to continue to ensure the interests of society and the welfare of the nation and to implement the values consolidated in the Constitution (rulings of 30 September 2003 and 8 July 2005).

Not only laws adopted by the legislature for regulating the transfer of state-owned property into the ownership of other subjects (*inter alia*, the privatisation of such property), but also the decisions of executive power regarding the implementation of these laws, must serve the public interest and the general welfare of the nation.

... the legislative and executive state powers, when amending the regulation of economic activity related to privatisation, are not allowed to deny the public interest and the requirements stemming from Article 46 of the Constitution (*inter alia*, Paragraph 3 thereof, under which the state regulates economic activity so that it serves the general welfare of the nation), as well as the constitutional principle of responsible governance.

The regulation of economic activity in cases where, *inter alia*, legal acts related to privatisation are adopted may be linked to the implementation of the rights and legitimate interests of various economic subjects, shareholders, or creditors. The Constitution, *inter alia*, Article 46 thereof, as well as the constitutional principle of responsible governance, gives rise to the duty of the legislature, when it regulates the relationships connected with privatisation, to precisely define the powers of employees and officials of state and municipal institutions and to determine their responsibility. Decisions adopted by institutions of executive power in the area of privatisation (especially those through which certain previous decisions establishing particular obligations are amended) must be rationally reasoned and the impact of such decisions on, *inter alia*, the economy of this country and the finances of the state must be properly assessed. The said decisions may not be arbitrary.

[...]

It needs to be emphasised that such practice of adopting resolutions by the Government is defective that ignores the requirements (stemming with respect to the institutions of executive power from Article 46 of the Constitution and the constitutional principle of responsible governance) that decisions adopted in the area of privatisation (particularly those by which certain previous decisions establishing particular obligations are amended) must be rationally reasoned and that the impact of such decisions on, *inter alia*, the economy and finances of the state must be properly assessed. No cases may be tolerated where the said government resolutions perfunctorily approve such privatisation agreements (amendments thereto) the content of which is not known to the public and which fail to concretely specify any circumstances ...

The procedure for the possession, use, and disposal of state-owned property must be established by law (Paragraph 2 of Article 128 of the Constitution)

The Constitutional Court's ruling of 24 February 2015

Paragraph 2 of Article 128 of the Constitution provides that the procedure for the possession, use, and disposal of state-owned property is established by law.

In interpreting the said provision, the Constitutional Court has held that it means that the legislature is entrusted with the regulation of issues concerning the activities of state enterprises, the management of shares held by the state in joint-stock companies, and other issues related to the possession, use, and disposal of state property; the legislature may choose legal instruments for this regulation to the extent not contrary to the Constitution; the stipulation of how to regulate the possession, use, or disposal of state property is a right of the legislature that is consolidated in the Constitution and only the Constitution defines the limits of this right (ruling of 24 January 1996). The Constitutional Court has also held that “relationships that arise when possessing, using, and disposing of state property must be regulated only by means of a law” (ruling of 24 January 1996), that “it is only the legislature that may establish the form of using state funds” (ruling of 28 February 1996), and that “it is only the legislature that may establish the manner and conditions for disposing of state property ...” (ruling of 22 October 1996). The competence of the Government in this area is defined by means of laws (ruling of 17 June 1997). Thus, the provision “the procedure for the possession, use, and disposal of state property is established by law” of Paragraph 2 of Article 128 of the Constitution gives rise to the duty of the legislature to establish, by means of a law, all key elements of the possession, use, and disposal of state property (ruling of 23 August 2005).

It should be noted that the said provisions of the official constitutional doctrine may not be interpreted as meaning that all relationships of the possession, use, and disposal of property belonging to the state by right of ownership must be regulated only by means of a law – the Government and other law-making subjects may also regulate, within their competence, these relationships by means of substatutory legal acts that are based on a law and do not compete with it. However, under Paragraph 2 of Article 128 of the Constitution, only the legislature may establish the key elements of the content of the rights to possess, use, and dispose of state property.

The subsurface as a special object of the natural environment that belongs by right of exclusive ownership to the state (Paragraph 1 of Article 47 (wording of 23 January 2003) of the Constitution) (on the issue of regulating economic and other activity related to the use of the subsurface, see 2.4.2. Social rights, 2.4.2.3. The right to a healthy environment, the ruling of 16 December 2015 (“The duty of the state, when regulating economic and other activity related to the use of the subsurface, to ensure the protection of the subsurface and other objects of the natural environment (land, water, air, plants, wildlife) and human health, as well as the rational use of natural resources”))

The Constitutional Court’s ruling of 16 December 2015

... under Paragraph 1 of Article 47 (wording of 23 January 2003) of the Constitution, the subsurface belongs by right of exclusive ownership to the Republic of Lithuania. The subsurface is a special object of the natural environment; it belongs by right of exclusive ownership to the state and may by no means become anyone else’s property. The fact that the subsurface is under the exclusive ownership of the state provides the constitutional ground for establishing a special and specific legal regime of the protection and exploitation of the subsurface compared with other objects of nature.

The legal regulation of forestry management in order to ensure the rational maintenance and use of state-owned forests (Paragraph 2 of Article 128 of the Constitution)

The Constitutional Court’s ruling of 16 April 2019

... forests that belong to the state by right of ownership are state property. Under Paragraph 2 of Article 128 of the Constitution, the procedure for the possession, use, and disposal of state property is established by law.

Interpreting Paragraph 2 of Article 128 of the Constitution, the Constitutional Court has noted that state-owned property is not an objective in itself, but that it must give benefit to society, must be used sparingly, not wasted, and managed rationally (*inter alia*, the rulings of 30 September 2003 and 20 March 2008); the duty arises for the legislature to establish, by means of a law, all the most important elements of the relationships connected with the possession, use, and disposal of state property (ruling of 23 August 2005). Moreover, the Constitutional Court has held in its rulings on more than one occasion that it is only the legislature that may establish the ways and conditions for the disposal of state property (rulings of 22 October 1996 and 23 August 2005).

[...]

... the Constitution, *inter alia*, Articles 46 and 54 and Paragraph 2 of Article 128 thereof, and the constitutional principle of a state under the rule of law give rise to the duty of the legislature to establish, by means of a law, the essential conditions for forestry management; the legislature must establish a clear and reasoned model of forestry management, *inter alia*, the respective subjects responsible for the management of forests belonging to the state by right of ownership, or the criteria for determining such subjects. It should also be noted that, while establishing the legal regulation governing forestry management, the legislature must observe, *inter alia*, the duty, which stems from Paragraph 3 of Article 46 of the Constitution, for the state to regulate economic activity so that it serves the general welfare of the people, by, at the same time, implementing the requirements, which stem from Article 54 and Paragraph 2 of Article 128 of the Constitution, *inter alia*, to ensure the proper protection of forests, as well as the rational management and use of forests as state-owned property.

11.3. THE BANK OF LITHUANIA

The status of the Bank of Lithuania; the obligation of the Republic of Lithuania to participate in the integration of the member countries into the economic and monetary union by adopting the euro (Article 125 of the Constitution, the Constitutional Act on Membership of the Republic of Lithuania in the European Union)

The Constitutional Court's ruling of 24 January 2014

The basis of the constitutional institution of the Bank of Lithuania is the provision of Paragraph 1 of Article 125 of the Constitution, according to which, in the Republic of Lithuania, the Bank of Lithuania is the central bank, which belongs to the State of Lithuania by right of ownership. ...

... Paragraph 2 of Article 125 of the Constitution (wording of 25 October 1992) defined the exclusive powers of the Bank of Lithuania to issue currency. It should be noted that these powers were annulled by the ... Law Amending Article 125 of the Constitution.

According to Paragraph 3 of Article 125 of the Constitution (wording of 25 October 1992), the procedures for the organisation and activities of the Bank of Lithuania, as well as its powers, had to be established by the Seimas by means of a law. It should be noted that, pursuant to the ... Law Amending Article 125 of the Constitution, the former Paragraph 3 of Article 125 of the Constitution became Paragraph 2 of Article 125 and was supplemented with the provision that the law should also establish the status of the Chairperson of the Board of the Bank of Lithuania, as well as the grounds of his/her dismissal.

Some other provisions of the Constitution are related to Article 125 of the Constitution.

Item 2 of Article 67 of the Constitution establishes the powers of the Seimas to pass laws. Thus, this provision of the Constitution also gives rise to the powers of the Seimas to regulate the activities of the Bank of Lithuania by means of a law, *inter alia*, to regulate, by means of a law, the procedure of the organisation of the Bank of Lithuania and its powers, the status of the Chairperson of the Board of the Bank of Lithuania, as well as the grounds of his/her release from duties.

Item 11 of Article 67 of the Constitution establishes the powers of the Seimas to appoint and dismiss, *inter alia*, the Chairperson of the Board of the Bank of Lithuania, whilst Item 13 of Article 84 establishes the powers of the President of the Republic to propose a candidate for the post of the Chairperson of the Board of the Bank of Lithuania for consideration by the Seimas or to submit that the Seimas express no confidence in him/her. These provisions of the Constitution presuppose the procedure of the appointment and dismissal of the Chairperson of the Board of the Bank of Lithuania according to which the Chairperson of the Board of the Bank of Lithuania is appointed and dismissed by the Seimas on the proposal of the President of the Republic.

In this context, it should be mentioned that, according to Article 75 of the Constitution, the officials appointed or elected by the Seimas, with the exception of the persons specified in Article 74 of the Constitution, are dismissed from office when the Seimas expresses no confidence in them by a majority vote of all the members of the Seimas.

It should be noted that the content of the constitutional legal regulation of the institution of the Bank of Lithuania changed upon the adoption of the Constitutional Act on Membership of the Republic of Lithuania in the European Union, which is a constituent part of the Constitution and by means of which ... membership of the Republic of Lithuania in the European Union was constitutionally confirmed.

... according to the preamble to the said Constitutional Act, the Seimas adopted it in order to execute "the will of the citizens of the Republic of Lithuania, as expressed in the referendum on membership of the Republic of Lithuania in the European Union, held on 10–11 May 2003", and in order to seek to ensure, *inter alia*, the full participation of the Republic of Lithuania in the European integration. It has also been mentioned that the full participation of the Republic of Lithuania, as a member of the European Union, in the European Union is a constitutional imperative based on the expression of the sovereign will of the Nation and that the full membership of the Republic of Lithuania in the European Union is a constitutional value.

It should be emphasised that the constitutional imperative of the full membership of the Republic of Lithuania in the European Union implies that the constitutional value is precisely full membership in the European Union, i.e. fully fledged, rather than partial, participation in the activities of this Union and in the integration of its Member States.

... the Constitutional Act on Membership of the Republic of Lithuania in the European Union establishes, *inter alia*, the constitutional foundations of membership of the Republic of Lithuania in the European Union. If such constitutional foundations were not consolidated in the Constitution, the Republic of Lithuania would not be able to be a full member of the European Union: *inter alia*, Article 1 of this Constitutional Act enshrines the principle that the Republic of Lithuania as a Member State of the European Union shares with or confers on the European Union the competences of its state institutions in the areas provided for in the founding Treaties of the European Union and to the extent it would, together with the other Member States of the European Union, jointly meet its membership commitments in those areas as well as enjoy the membership rights.

... one of the areas where, under Article 1 of the Constitutional Act on Membership of the Republic of Lithuania in the European Union, the Republic of Lithuania, as a Member State of the European Union, shares with and confers on the European Union the competences of its state institutions is the economic and monetary union, the currency of which is the euro, as specified in Paragraph 4 of Article 3 of the Treaty on European Union. It should also be noted that, pursuant to Paragraph 2 of Article 119 of the Treaty on the Functioning of the European Union, activities of the Member States and the Union in the area of economic and monetary policy shall include a single currency – the euro, and the definition and conduct of a single monetary policy and exchange-rate policy; according to Paragraph 1c of Article 3 of the same treaty, the Union shall have exclusive competence in the area of monetary policy for the Member States whose currency is the euro. It needs to be emphasised that, by virtue of Article 1 of the Constitutional Act on Membership of the Republic of Lithuania in the European Union, the Republic of Lithuania shares with and confers the competences of its state institutions in the area of economic and monetary policy in order to jointly meet, together with the other Member States of the European Union, its commitments of full membership in the European Union and to enjoy the full membership rights in the European Union in this area.

It should be noted further that one of the basic tasks to be carried out through the European System of Central Banks (hereinafter also referred to as the ESCB) is to define and implement the monetary policy of the Union (Paragraph 2 of Article 127 of the Treaty on the Functioning of the European Union). According to Article 8 of the Protocol on the Statute of the European System of Central Banks and of the European Central Bank, the ESCB shall be governed by the decision-making bodies of the European Central Bank (hereinafter also referred to as the ECB); according to Paragraph 3 of Article 14 of the same protocol, the national central banks are an integral part of the ESCB and shall act in accordance with the guidelines and instructions of the ECB; according to Paragraph 1 of Article 10 of the same protocol, the governors of the national central banks are members of the Governing Council of the ECB.

It should also be noted that:

– according to Article 128 of the Treaty on the Functioning of the European Union, the European Central Bank shall have the exclusive right to authorise the national central banks, *inter alia*, to issue euro banknotes (Paragraph 1), and Member States may issue euro coins subject to approval by the ECB of the volume of the issue (Paragraph 2);

– Article 130 of the Treaty on the Functioning of the European Union and Article 7 of the Protocol on the Statute of the European System of Central Banks and of the European Central Bank establish the principle of independence of the ECB and the national central banks according to which, *inter alia*, neither a national central bank nor any member of its decision-making bodies shall take instructions from the government of a Member State or from any other body; in this regard, it should be noted that, according to Paragraph 2 of Article 14 of the Protocol on the Statute of the European System of Central Banks and of the European Central Bank, the Governor of the national central bank may be relieved from office only if

he no longer fulfils the conditions required for the performance of his duties or if he has been guilty of serious misconduct.

Accordingly, having regard to Article 1 of the Constitutional Act on Membership of the Republic of Lithuania in the European Union, on the basis whereof the Republic of Lithuania participates, *inter alia*, in the economic and monetary union, shares with or confers on the European Union the competences of its state institutions, *inter alia*, in the area of economic and monetary policy, it should be noted that the constitutional status of the Bank of Lithuania is defined as the status of the central bank of the Republic of Lithuania, whose competence is partly conferred on the ECB and which is an integral part of the ESCB; thus, the corresponding independence guarantees should be applied to the Bank of Lithuania and to the Chairperson of the Board of the Bank of Lithuania according to the Constitution, *inter alia*, in observance of the constitutional principle of *pacta sunt servanda*.

It should be noted further that, having regard to such a constitutional status of the Bank of Lithuania and the Chairperson of the Board of the Bank of Lithuania, the powers of the President of the Republic established in Item 13 of Article 84 of the Constitution to submit that the Seimas express no confidence in the Chairperson of the Board of the Bank of Lithuania should only be related to the possibility of expressing no confidence in the Chairperson of the Board of the Bank of Lithuania under such circumstances the nature of which prevent the Chairperson of the Board from performing his/her duties in general.

In this context, it should be noted further that, according to the Constitution, the legislature, when regulating the activities of the Bank of Lithuania, *inter alia*, defining the grounds and procedure for the dismissal of the Chairperson of the Board of the Bank of Lithuania, must pay regard to the constitutional status and the corresponding independence guarantees of the Bank of Lithuania, as the integral part of the ESCB. This means, *inter alia*, that it is not allowed to establish any such a legal regulation to the effect that:

- the preconditions would be created for the legislature and the executive to exert influence on the Bank of Lithuania, *inter alia*, the obligation would be created for the Chairperson of the Board of the Bank of Lithuania to submit reports on the performance of his/her functions subject to the approval by the Seimas, the President of the Republic, or the Government; it should be noted that the constitutional provision that state institutions serve the people implies the obligation of the legislature to establish the legal regulation to the effect that the Chairperson of the Board of the Bank of Lithuania would have the obligation to inform the public, the Seimas, the President of the Republic, and the Government about the activities of the Bank of Lithuania;

- such grounds would be established for the dismissal of the Chairperson of the Board of the Bank of Lithuania before the expiry of the term of his/her powers established by law where the said grounds would not be related to the non-fulfilment of the conditions, established by means of a law, required for the performance of his/her duties or to the fact that he/she has been guilty of serious misconduct.

To sum up, it should be noted that the aforementioned constitutional imperative of the full participation of the Republic of Lithuania in the European Union and its fully fledged membership in the European Union, as a constitutional value, also implies the constitutional obligation of the Republic of Lithuania to participate, as a fully fledged Member State, *inter alia*, in the integration of the member countries into the economic and monetary union, *inter alia*, by adopting the common currency of this union – the euro – and conferring on the European Union the exclusive competence in the area of monetary policy. It should be noted that such a constitutional obligation of the State of Lithuania is concurrently an obligation arising from its membership in the European Union, which the State of Lithuania is obliged to fulfil while observing its geopolitical orientation consolidated in the Constitution and the constitutional principle of *pacta sunt servanda*.

It should also be noted that, in order to implement the said constitutional obligation of the Republic of Lithuania for its membership in the European Union, the competence of the Bank of Lithuania in the area of monetary policy, *inter alia*, the issuing of currency, must be conferred on the European Central Bank.

[...]

In the constitutional justice case at issue, it has been held that the Law Amending Article 125 of the Constitution, in view of the manner of its adoption, is in conflict with Paragraph 1 of Article 147 of the Constitution. This means that, as from the day of the official publication of this ruling, the Law Amending Article 125 of the Constitution, *inter alia*, including Paragraph 2 of Article 125 of the Constitution, may not be applied.

In view of the overall constitutional legal regulation, *inter alia*, the constitutional status of the Bank of Lithuania, it needs to be emphasised that the recognition that the Law Amending Article 125 of the Constitution is in conflict with the Constitution does not mean that the wording of Article 125 of the Constitution that was valid prior to the entry into force of the said law will become effective again. Thus, it should be noted that the Constitution does not provide for the exclusive right of the Bank of Lithuania to issue currency.

[...]

It needs to be emphasised that the legislature, when it regulates the activities of the Bank of Lithuania, *inter alia*, the procedure of the organisation of the Bank of Lithuania and its powers, the status of the Chairperson of the Board of the Bank of Lithuania, as well as the grounds of his/her dismissal, is bound by the Constitution.

The legislature must pay regard to the constitutional status of the Bank of Lithuania, according to which a certain part of the competence of the Bank of Lithuania has been conferred on the ECB and the Bank of Lithuania is an integral part of the ESCB. In this context, it should be noted that such a constitutional status of the Bank of Lithuania implies that its competence in the monetary policy has been conferred on the ECB and that the Bank of Lithuania and ... the Chairperson of its Board have the corresponding guarantees; as mentioned before, the Constitution does not provide for the exclusive right of the Bank of Lithuania to issue currency.

... the legislature, *inter alia*, must establish such grounds of the dismissal of the Chairperson of the Board of the Bank of Lithuania before the expiry of the term of his/her powers (where the said term is established by means of a law) that would only be related to the non-fulfilment of the conditions, established by means of a law, required for the performance of his/her duties or to the fact that he/she has been guilty of serious misconduct; in addition, it must establish the legal regulation to the effect that the Bank of Lithuania would not have the exclusive right to issue currency as from the day of the adoption of the euro in the Republic of Lithuania.

12. THE NATIONAL AUDIT OFFICE

The independence of the National Audit Office (Article 134 of the Constitution)

The Constitutional Court's ruling of 6 December 1995

... Chapter XII of the Constitution determines the functions and framework of the activities of the National Audit Office – a state institution exercising economic financial control, which supervises the lawfulness of the possession and use of state-owned property and the execution of the state budget. It is accountable directly to the Seimas, which exercises parliamentary control over this institution.

[...]

Article 134 of the Constitution prescribes: “The National Audit Office shall supervise the lawfulness of the possession and use of state-owned property and the execution of the State Budget. The Auditor General shall submit a conclusion to the Seimas concerning the report on the annual execution of the budget.” ...

To enable the National Audit Office to fulfil all functions vested in it objectively, the independence of this institution must be safeguarded.

The incompatibility of the office of the Auditor General with the office of a member of a municipal council (Paragraph 2 of Article 133 and Paragraph 1 of Article 134 of the Constitution)

The Constitutional Court's ruling of 30 May 2003

Paragraph 1 of Article 134 of the Constitution provides that the National Audit Office supervises the lawfulness of the possession and use of state-owned property and the execution of the state budget. The National Audit Office is headed by the Auditor General (Paragraph 2 of Article 133 of the Constitution).

[...]

As the Auditor General is empowered to control and supervise the activities of municipal councils, he/she may not simultaneously be a member of a municipal council.

The legal regulation according to which the same person could be both the Auditor General and a member of a municipal council at the same time would be in conflict with Paragraph 1 of Article 119, Paragraph 2 of Article 120 and Paragraph 1 of Article 134 of the Constitution.

The constitutional mission and autonomy of the National Audit Office and its powers to carry out state audits (Paragraph 1 of Article 134 of the Constitution)

The Constitutional Court's ruling of 16 May 2019

... Chapter XII of the Constitution provides for the institution of national audit.

Under Paragraph 1 of Article 134 of the Constitution, the National Audit Office supervises the lawfulness of the possession and use of state-owned property and the execution of the state budget.

As stated by the Constitutional Court in its ruling of 6 December 1995, under the Constitution, the National Audit Office is an institution of economic and financial control, supervising the execution of the state budget; it is accountable directly to the Seimas, which exercises parliamentary control over this institution; to enable the National Audit Office to objectively fulfil all the functions assigned to it, this institution must be autonomous.

In its ruling of 30 September 2003, the Constitutional Court held that state-owned property is not an objective in itself, it should benefit society; while acting in the interests of society, state institutions must serve the common good of the people; according to Paragraph 1 of Article 134 of the Constitution, state-owned property must be possessed and used lawfully; this is supervised by the National Audit Office. In this context, the Constitutional Court also held that the provision of Paragraph 2 of Article 23 of the Constitution, under which the rights of ownership are protected by law, also means that laws must protect

the rights of all owners; thus, laws must also protect the right of ownership of the state as the organisation of all society; the striving for an open, harmonious, and just civil society, which is consolidated in the Preamble to the Constitution, the constitutional principle that ownership includes obligations, Paragraph 2 of Article 23 of the Constitution, under which the rights of ownership are protected by law, the provision of Paragraph 2 of Article 128 of the Constitution that the procedure concerning the possession, use, and disposal of state-owned property is established by law, as well as other provisions of the Constitution, give rise to the requirement that state-owned property must be used sparingly and not wasted; this property must be managed rationally.

Thus, Paragraph 1 of Article 134 of the Constitution, according to which the National Audit Office supervises the lawfulness of the possession and use of state-owned property and the execution of the state budget, interpreted in the context of the other provisions of the Constitution, *inter alia*, Paragraph 2 of Article 23 and Paragraph 2 of Article 128 thereof, gives rise to the powers of the National Audit Office to verify the lawfulness and effective use of state-owned property, *inter alia*, state budget funds, i.e. whether state-owned property is used to serve the common good of the people, *inter alia*, whether it is used sparingly and not wasted, and whether it is managed rationally and effectively. In other words, under Paragraph 1 of Article 134 of the Constitution, the National Audit Office has the powers to carry out a state audit, i.e. to inspect state assets, *inter alia*, state budget appropriations and the activities of the managing and using entities, *inter alia*, in terms of economy, efficiency, and effectiveness, among other things, the National Audit Office has the powers to assess the lawfulness of the management and use of state assets, as well as, *inter alia*, the compliance of the management and use of state assets with the objectives set in the Constitution and/or laws.

It should be noted that the constitutional mission of the National Audit Office and the constitutional principles of a state under the rule of law and the separation of powers imply the constitutional requirement for the National Audit Office to exercise its powers, arising from Paragraph 1 of Article 134 of the Constitution, *inter alia*, to carry out a state audit, independently from other state authorities, *inter alia*, from the Seimas, the President of the Republic, or the Government. Therefore, the fact that, under the Constitution, the National Audit Office is accountable to the Seimas does not mean that the Seimas may, *inter alia*, by exercising parliamentary control over the National Audit Office, take over the constitutional powers of the National Audit Office or otherwise interfere with their implementation, *inter alia*, even if it assigns the National Audit Office the task of carrying out the state audits of entities managing and using state assets, *inter alia*, state budget appropriations.

13. FOREIGN POLICY AND NATIONAL DEFENCE

13.1. FOREIGN POLICY

On the legal force of international and EU law in the legal system of Lithuania, see 1. The foundations of the constitutional order, 1.8. The foundations of lawmaking and of the application of law, 1.8.4. The hierarchy of legal acts, 1.8.4.3. International and EU law.

The State of Lithuania recognises the principles and norms of international law (Paragraph 1 of Article 135 and Paragraph 3 of Article 138 of the Constitution)

The Constitutional Court's ruling of 9 December 1998

Paragraph 1 of Article 135 of the Constitution states that, in implementing its foreign policy, the Republic of Lithuania follows the universally recognised principles and norms of international law, seeks

to ensure national security and independence, the welfare of its citizens, and their basic rights and freedoms, and contributes to the international order based on law and justice.

Paragraph 3 of Article 138 of the Constitution provides that international treaties ratified by the Seimas of the Republic of Lithuania are a constituent part of the legal system of the Republic of Lithuania.

Interpreting these articles of the Constitution, it needs to be noted that the State of Lithuania, while recognising the principles and norms of international law, may not apply essentially different standards to the people of this country. Holding that it is a full member of the international community, the State of Lithuania, of its own free will, adopts and recognises these principles and norms, the customs of the international community, naturally integrates itself into the world culture, and becomes its natural part.

The Republic of Lithuania observes the international obligations undertaken by it and respects the universally recognised principles of international law (Paragraph 1 of Article 135 and Paragraph 3 of Article 138 of the Constitution)

The Constitutional Court's ruling of 14 March 2006

... the observance of international obligations undertaken of its own free will and respect for the universally recognised principles of international law (as well as the principle of *pacta sunt servanda*) are a legal tradition and a constitutional principle of the restored independent State of Lithuania.

[...]

... the principle consolidated in the Constitution that the Republic of Lithuania observes international obligations undertaken of its own free will and respects the universally recognised principles of international law implies that, in cases where national legal acts (*inter alia*, laws or constitutional laws) establish such a legal regulation that competes with the one established in an international treaty, the international treaty is to be applied.

The constitutional foundations of international cooperation carried out by the state; the geopolitical orientation of the state (on international cooperation on military matters, see 13.2. National defence; the ruling of 15 March 2011)

The Constitutional Court's ruling of 15 March 2011

The general constitutional foundations for international cooperation carried out by the state where such cooperation is related, *inter alia*, to national defence are consolidated in various provisions of the Constitution.

Paragraph 1 of Article 135 of the Constitution provides that, in implementing its foreign policy, the Republic of Lithuania follows the universally recognised principles and norms of international law, seeks to ensure national security and independence, the welfare of its citizens, and their basic rights and freedoms, and contributes to the creation of the international order based on law and justice (Paragraph 1); in the Republic of Lithuania, war propaganda is prohibited (Paragraph 2).

Article 136 of the Constitution states that the Republic of Lithuania participates in international organisations provided that this is not in conflict with the interests and independence of the state.

Article 138 of the Constitution provides that the Seimas ratifies or denounces the following international treaties of the Republic of Lithuania: (1) on the alteration of the boundaries of the State of the Republic of Lithuania; (2) on political cooperation with foreign states; mutual assistance treaties; as well as treaties of a defensive nature related to the defence of the state; (3) on the renunciation of the use of force or threatening by force; as well as peace treaties; (4) on the presence and status of the armed forces of the Republic of Lithuania on the territories of foreign states; (5) on the participation of the Republic of Lithuania in universal international organisations and regional international organisations; (6) multilateral or long-term economic treaties (Paragraph 1); the same article provides that laws, as well as international treaties, may also provide for other cases when the Seimas ratifies international treaties of the Republic of Lithuania (Paragraph 2); and that international treaties ratified by the Seimas of the Republic of Lithuania are a constituent part of the legal system of the Republic of Lithuania (Paragraph 3).

The Constitutional Act on Membership of the Republic of Lithuania in the European Union, which was adopted while “seeking to ensure the fully fledged participation of the Republic of Lithuania in the European integration, as well as the security of the Republic of Lithuania and welfare of its citizens” (Preamble), provides, *inter alia*, that the Republic of Lithuania as a Member State of the European Union shares with or confers on the European Union the competences of its state institutions in the areas provided for in the founding Treaties of the European Union and to the extent it would, together with the other Member States of the European Union, jointly meet its membership commitments in those areas, as well as enjoy membership rights (Paragraph 1); the norms of European Union law are a constituent part of the legal system of the Republic of Lithuania; where it concerns the founding Treaties of the European Union, the norms of European Union law are applied directly, while in the event of the collision of legal norms, they have supremacy over the laws and other legal acts of the Republic of Lithuania (Article 2).

Thus, the general constitutionally consolidated foundations for international cooperation carried out by the state where such cooperation is related, *inter alia*, to the defence of the state are characterised, *inter alia*, by the consolidation of the geopolitical orientation of the State of Lithuania – the participation of the state in European integration as a Member of the European Union and the striving of the state to ensure national independence and security by contributing to the creation of the international order based on law and justice.

... the geopolitical orientation of the State of Lithuania – the participation of the state in European integration – is inseparable from other international obligations of the Republic of Lithuania arising from the membership of Lithuania in other international organisations, *inter alia*, the United Nations and the North Atlantic Treaty Organisation; this membership provides Lithuania not only with additional security guarantees, but also implies the necessity to observe the international obligations undertaken by it.

... the power of the Seimas, which is consolidated in Paragraph 1 of Article 142 of the Constitution, to adopt the decision to use the armed forces when the need arises to defend the Homeland or to fulfil the international obligations of the State of Lithuania also includes such a decision to use the armed forces when it is necessary to fulfil the international obligations of the Republic of Lithuania under international treaties of the Republic of Lithuania.

The geopolitical orientation of the state

The Constitutional Court's ruling of 24 January 2014

... the fundamental constitutional values consolidated in Article 1 of the Constitution – the independence of the state, democracy, the republic – are closely interrelated with the geopolitical orientation of the State of Lithuania, which is consolidated in the Constitution and implies European and transatlantic integration pursued by the Republic of Lithuania. As the Constitutional Court noted in its ruling of 7 July 2011, the geopolitical orientation of the State of Lithuania means the membership of the Republic of Lithuania in the EU and NATO, as well as the necessity to fulfil the respective international obligations related to the said membership. It should also be noted that such geopolitical orientation of the State of Lithuania is based upon the recognised and protected universal constitutional values that are common with the values of other European and North American states.

The geopolitical orientation of the State of Lithuania is expressed in the text of the Constitution both in the negative and positive aspects. The negative aspect of the geopolitical orientation of the State of Lithuania is expressed in the Constitutional Act on the Non-Alignment of the Republic of Lithuania to Post-Soviet Eastern Unions, whereas the positive aspect is consolidated in the Constitutional Act on Membership of the Republic of Lithuania in the European Union. These constitutional acts are a constituent part of the Constitution.

Non-Alignment to Post-Soviet Eastern unions (Constitutional Act on the Non-Alignment of the Republic of Lithuania to Post-Soviet Eastern Unions) as the negative aspect of the geopolitical orientation of the State of Lithuania

The Constitutional Court's ruling of 24 January 2014

The Constitutional Act on the Non-Alignment of the Republic of Lithuania to Post-Soviet Eastern Unions lays down the limits that may not be overstepped by the Republic of Lithuania in the processes of its participation in international integration and consolidates the prohibition on joining any new political, military, economic, or other unions or commonwealths of states formed on the basis of the former USSR. It is clear from the preamble to this constitutional act that it was adopted by invoking “the 16 February 1918 and 11 March 1990 Acts on the Restoration of the Independent State of Lithuania and acting upon the will of the entire Nation, as expressed on 9 February 1991”. Thus, the basis of the provisions of this constitutional act is the same fundamental principle of the state, which is based on the declaration of the sovereign will of the Nation and consolidated in Article 1 of the Constitutional Law on the State of Lithuania: i.e. the State of Lithuania is an independent democratic republic. Therefore, under the Constitution, the provisions of the Constitutional Act on the Non-Alignment of the Republic of Lithuania to Post-Soviet Eastern Unions should enjoy the same protection as the provision “The State of Lithuania shall be an independent democratic republic”, which is stipulated in Article 1 of the Constitution and Article 1 of the Constitutional Law on the State of Lithuania. In view of this, it needs to be held that, although Article 148 of the Constitution does not explicitly regulate the procedure for the alteration of the constituent parts of the Constitution, *inter alia*, the procedure for the alteration of the Constitutional Act on the Non-Alignment of the Republic of Lithuania to Post-Soviet Eastern Unions, the requirement stems from the very essence of the provisions of the Constitutional Act on the Non-Alignment of the Republic of Lithuania to Post-Soviet Eastern Unions to amend those provisions under the procedure that is the same for the alteration of the constitutional provision “The State of Lithuania shall be an independent democratic republic”, i.e. under the same procedure as established in Article 2 of the Constitutional Law on the State of Lithuania.

... the imperative stems from Paragraph 1 of Article 6 of the Constitution to the effect that no amendments to the Constitution may violate the harmony of the provisions of the Constitution or the harmony of the values consolidated by them. In view of this, it should be noted that, under the Constitution, no amendments may be made to the Constitution that would deny the provisions of the Constitutional Act on the Non-Alignment of the Republic of Lithuania to Post-Soviet Eastern Unions, with the exception of the cases where certain provisions of this constitutional act would be altered in the same manner as provided for in Article 2 of the Constitutional Law on the State of Lithuania.

Membership in the European Union (Constitutional Act on Membership of the Republic of Lithuania in the European Union) as the positive aspect of the geopolitical orientation of the State of Lithuania (for more on the obligation of the Republic of Lithuania to participate in the integration of the member countries into the economic and monetary union by adopting the euro, see 11. The state budget and finances; 11.3. The Bank of Lithuania; the ruling of 24 January 2014)

The Constitutional Court's ruling of 24 January 2014

The membership of the Republic of Lithuania in the European Union was constitutionally confirmed by means of the Constitutional Act on Membership of the Republic of Lithuania in the European Union. The preamble to this Constitutional Act makes it clear that the Seimas adopted it in order to execute “the will of the citizens of the Republic of Lithuania, as expressed in the referendum on membership of the Republic of Lithuania in the European Union, held on 10–11 May 2003” and while “expressing its conviction that the European Union respects human rights and fundamental freedoms and that Lithuanian membership in the European Union will contribute to the more efficient securing of human rights and freedoms”, “noting that the European Union respects the national identity and constitutional traditions of its Member States”, and “seeking to ensure the fully fledged participation of the Republic of Lithuania in the European integration, as well as the security of the Republic of Lithuania and welfare of its citizens”.

Thus, it needs to be emphasised that the full participation of the Republic of Lithuania, as a Member of the European Union, in the European Union is a constitutional imperative based on the expression of the sovereign will of the Nation and that the full membership of the Republic of Lithuania in the European Union is a constitutional value.

It should be noted that the Constitutional Act on Membership of the Republic of Lithuania in the European Union establishes, *inter alia*, the constitutional foundations of the membership of the Republic of Lithuania in the European Union. If such constitutional foundations were not consolidated in the Constitution, the Republic of Lithuania would be unable to be a full member of the European Union: the Republic of Lithuania as a Member State of the European Union shares with or confers on the European Union the competences of its state institutions in the areas provided for in the founding Treaties of the European Union and to the extent it would, together with the other Member States of the European Union, jointly meet its membership commitments in those areas, as well as enjoy membership rights (Article 1); the norms of European Union law are a constituent part of the legal system of the Republic of Lithuania; where it concerns the founding Treaties of the European Union, the norms of European Union law are applied directly, while in the event of the collision of legal norms, they have supremacy over the laws and other legal acts of the Republic of Lithuania (Article 2). It needs to be emphasised that these constitutional foundations of membership of the Republic of Lithuania in the European Union were consolidated in the Constitution so as to execute the will of the Nation that the Republic of Lithuania could be a member of the European Union.

In view of this, it needs to be held that those foundations themselves and the expression of the sovereign will of the Nation, as the source of these foundations, determine the requirement that the provisions of Articles 1 and 2 of the Constitutional Act on Membership of the Republic of Lithuania in the European Union be altered or annulled only by referendum.

It has been mentioned that the geopolitical orientation of the State of Lithuania means, *inter alia*, the membership of the Republic of Lithuania in the EU, as well as the necessity to fulfil the respective international obligations related to the said membership ... amendments to the Constitution may not violate the harmony of the provisions of the Constitution or the harmony of the values consolidated by them. In view of this, it should be noted that, under the Constitution, as long as the aforesaid constitutional foundations for membership of the Republic of Lithuania in the European Union, which are consolidated in Articles 1 and 2 of the Constitutional Act on Membership of the Republic of Lithuania in the European Union, have not been annulled by referendum, any amendments to the Constitution that would deny the obligations of the Republic of Lithuania arising from its membership in the European Union are not permitted.

[...]

It should be emphasised that the constitutional imperative of the full membership of the Republic of Lithuania in the European Union implies that the constitutional value is specifically full membership in the European Union, i.e. fully fledged, rather than partial, participation in the activities of this Union and in the integration of its Member States.

[...]

... the constitutional imperative of the fully fledged participation of the Republic of Lithuania in the European Union and its full membership in the European Union, as a constitutional value, also implies the constitutional obligation of the Republic of Lithuania to participate, as a full Member State, *inter alia*, in the integration of the member countries into the economic and monetary union, *inter alia*, by adopting the common currency of this union – the euro – and conferring on the European Union the exclusive competence in the area of monetary policy. It should be noted that such a constitutional obligation of the State of Lithuania is concurrently an obligation arising from its membership in the European Union, which the State of Lithuania is obliged to fulfil while observing its geopolitical orientation consolidated in the Constitution and the constitutional principle of *pacta sunt servanda*.

The principle of respect for international law (Paragraph 1 of Article 135 of the Constitution)

The Constitutional Court's ruling of 24 January 2014

Respect for international law, which is also a constitutional value, is related to the geopolitical orientation of the State of Lithuania, which is consolidated in the Constitution.

It should be noted that, under Paragraph 1 of Article 135 of the Constitution, in implementing its foreign policy, the Republic of Lithuania follows the universally recognised principles and norms of international law. The constitutional principle of respect for international law, i.e. the principle of *pacta sunt servanda*, as consolidated in this provision, means the imperative of fulfilling in good faith the obligations assumed by the Republic of Lithuania under international law, *inter alia*, international treaties.

As the Constitutional Court has noted, the observance of international obligations undertaken of its own free will and respect for the universally recognised principles of international law (as well as the principle of *pacta sunt servanda*) are a legal tradition and a constitutional principle of the restored independent State of Lithuania (rulings of 14 March 2006 and 5 September 2012). It should be noted that respect for international law is an inseparable part of the constitutional principle of a state under the rule of law; the essence of the said principle is the rule of law.

... amendments to the Constitution may not violate the harmony of the provisions of the Constitution or the harmony of the values consolidated by them. In view of this, it should be noted that the Constitution does not permit any such amendments to the Constitution that would deny the international obligations of the Republic of Lithuania (*inter alia*, the obligations of the Republic of Lithuania arising from its membership in NATO where such obligations are preconditioned by the ... geopolitical orientation of the Republic of Lithuania) and, at the same time, would deny the constitutional principle of *pacta sunt servanda*, as long as the said international obligations have not been renounced in accordance with the norms of international law.

The principle of respect for international law (Paragraph 1 of Article 135 of the Constitution)

The Constitutional Court's ruling of 18 March 2014

... As noted by the Constitutional Court in its ruling of 24 January 2014, under Paragraph 1 of Article 135 of the Constitution, the Republic of Lithuania is obliged to follow the universally recognised principles and norms of international law; the said provision consolidates the constitutional principle of respect for international law, i.e. the principle of *pacta sunt servanda*, which means the imperative of fulfilling in good faith the obligations assumed by the Republic of Lithuania under international law, *inter alia*, international treaties.

It should be noted that the constitutional principle of *pacta sunt servanda* also means the imperative of fulfilling in good faith the international obligations arising from the universally recognised norms of international law (general international law) that prohibit international crimes.

[...]

... It should be noted that respect for international law is an inseparable part of the constitutional principle of a state under the rule of law; the essence of the said principle is the rule of law (ruling of 24 January 2014).

In the context of the constitutional justice case at issue, it should be noted that, under Paragraph 1 of Article 135 of the Constitution and the constitutional principle of a state under the rule of law, the Republic of Lithuania is obliged to fulfil, in good faith, its international obligations arising under the universally recognised norms of international law (general international law), *inter alia*, under the *jus cogens* norms that prohibit international crimes and are consolidated, *inter alia*, in the international treaties of the Republic of Lithuania ratified by the Seimas, which, as stipulated in Paragraph 3 of Article 138 of the Constitution, are a constituent part of the legal system of the Republic of Lithuania.

[...]

In this context, it should be noted that, in its ruling of 9 December 1998, in interpreting Paragraph 1 of Article 135 of the Constitution, under which, in implementing its foreign policy, the Republic of Lithuania follows the universally recognised principles and norms of international law, seeks to ensure national security and independence, the welfare of its citizens, and their fundamental rights and freedoms, and contributes to the creation of the international order based on law and justice, as well as Paragraph 3 of Article 138, which stipulates that international treaties ratified by the Seimas of the Republic of Lithuania

are a constituent part of the legal system of the Republic of Lithuania, the Constitutional Court held that the State of Lithuania, recognising the principles and norms of international law, may not apply substantially different standards to the people of this country; holding that it is a full member of the international community, the State of Lithuania, of its own free will, adopts and recognises these principles and norms, the customs of the international community, naturally integrates itself into the world culture, and becomes its natural part.

It has been mentioned that respect for international law is an inseparable part of the constitutional principle of a state under the rule of law; the essence of the said principle is the rule of law. As the Constitutional Court has mentioned on more than one occasion, this constitutional principle also embodies the striving for an open, just, and harmonious civil society and a state under the rule of law, as consolidated in the Preamble to the Constitution (rulings of 19 September 2002, 17 November 2003, and 13 December 2004). ... respect for international law is also linked to the striving for an open, just, and harmonious civil society, which is expressed through the constitutional principle of a state under the rule of law and implies, *inter alia*, openness to universal democratic values and integration into the international community based on these values.

Thus, in the context of the constitutional justice case at issue, it should also be noted that, in order to be in line with the commitment of the Republic of Lithuania, as prescribed in Paragraph 1 of Article 135 of the Constitution, to fulfil, in good faith, its international obligations arising under the universally recognised norms of international law (general international law), *inter alia*, under the *jus cogens* norms that prohibit international crimes, the criminal laws of the Republic of Lithuania that are related to responsibility for international crimes, *inter alia*, genocide, may not establish any such standards that would be lower than those established under the universally recognised norms of international law. Disregard for the said requirement would be incompatible with the striving for an open, just, and harmonious civil society and a state under the rule of law, as consolidated in the Preamble to the Constitution and expressed through the constitutional principle of a state under the rule of law.

The constitutional foundations of international cooperation carried out by the State of Lithuania

The Constitutional Court's decision of 16 May 2016

... the provisions of the official constitutional doctrine that are related to the general constitutional foundations of international cooperation carried out by the State of Lithuania are as follows:

– the general constitutional foundations of international cooperation carried out by the state are consolidated in various provisions of the Constitution, *inter alia*, in Paragraph 1 of Article 135 thereof; the said paragraph states that, in implementing its foreign policy, the Republic of Lithuania follows the universally recognised principles and norms of international law, seeks to ensure national security and independence, the welfare of its citizens, and their basic rights and freedoms, and contributes to the creation of the international order based on law and justice; the aforementioned constitutional foundations are also consolidated in Article 136 of the Constitution, whereby the Republic of Lithuania participates in international organisations provided that this is not in conflict with the interests and independence of the state (ruling of 15 March 2011); under Paragraph 3 of Article 138 of the Constitution, international treaties ratified by the Seimas of the Republic of Lithuania are a constituent part of the legal system of the Republic of Lithuania; respect for international law, i.e. the observance of international obligations undertaken of its own free will, and respect for the universally recognised principles of international law (as well as the principle of *pacta sunt servanda*) are a legal tradition and a constitutional principle of the restored independent State of Lithuania (ruling of 14 March 2006);

– respect for international law is an inseparable part of the constitutional principle of a state under the rule of law; the essence of the said principle is the rule of law (rulings of 24 January 2014 and 18 March 2014); respect for international law is also linked to the striving for an open, just, and harmonious civil society, which is expressed through the constitutional principle of a state under the rule of law and implies, *inter alia*, openness to universal democratic values and integration into the international community based on these values (ruling of 18 March 2014);

– the general constitutionally consolidated foundations for international cooperation carried out by the state are characterised, *inter alia*, by the consolidation of the geopolitical orientation of the State of Lithuania (ruling of 15 March 2011); the geopolitical orientation of the State of Lithuania means the membership of the Republic of Lithuania in the EU and NATO, as well as the necessity to fulfil the respective international obligations related to the said membership (rulings of 24 January 2014 and 19 November 2015); such geopolitical orientation of the State of Lithuania is based upon the recognised and protected universal constitutional values that are common with the values of other European and North American states (ruling of 24 January 2014); the fully fledged participation of the Republic of Lithuania, as a member of the European Union, in the European Union is a constitutional imperative based on the expression of the sovereign will of the Nation; the full membership of the Republic of Lithuania in the European Union is a constitutional value (ruling of 24 January 2014).

... Paragraph 1 of Article 135 of the Constitution consolidates the foundations of international cooperation carried out by the Republic of Lithuania in order to implement the constitutional objectives of foreign policy to ensure national security and independence, the welfare of its citizens, and their fundamental rights and freedoms, and to contribute to the creation of the international order based on law and justice; when account is taken of the geopolitical orientation of the State of Lithuania, the aforementioned foundations of international cooperation imply such an activity performed by the State of Lithuania, by its institutions, and by individuals employed therein that is aimed at contributing to the partnership of other states with the European Union or with NATO, or at contributing to the integration of the said states into these international organisations by promoting the dissemination of universal and democratic values, as well as the principles of EU law, as, for instance, democracy, the rule of law, transparency, the independence of courts and judges, respect for human rights and fundamental freedoms, and, *inter alia*, the dissemination of the said values and principles in the spheres of the improvement of the systems of justice and the activity of courts.

The constitutional obligation of the Republic of Lithuania to properly implement the requirements of European Union law (Constitutional Act on Membership of the Republic of Lithuania in the European Union)

The Constitutional Court's decision of 20 December 2017

The Constitutional Court has held that full participation by the Republic of Lithuania, as a Member State, in the European Union is a constitutional imperative based on the expression of the sovereign will of the Nation; full membership of the Republic of Lithuania in the European Union is a constitutional value (rulings of 24 January 2014 and 19 November 2015 and the decision of 16 May 2016).

The Constitutional Court has noted that the Constitutional Act on Membership of the Republic of Lithuania in the European Union, *inter alia*, establishes the constitutional foundations for membership of the Republic of Lithuania in the European Union; if these constitutional foundations were not consolidated in the Constitution, the Republic of Lithuania could not be a full member of the European Union: the Republic of Lithuania, as a Member State of the European Union, shares with or confers on the European Union the competences of its state institutions in the areas provided for in the founding Treaties of the European Union and to the extent it would, together with the other Member States of the European Union, jointly meet its membership commitments in those areas, as well as enjoy membership rights (Article 1); the norms of European Union law are a constituent part of the legal system of the Republic of Lithuania (Article 2) (rulings of 24 January 2014 and 14 July 2014 and the decision of 20 October 2017). The Constitutional Court has noted on more than one occasion that the jurisprudence of the European Court of Human Rights, as a source of interpretation of law, is also important for the interpretation and application of Lithuanian law.

Thus, the constitutional imperative of full participation by the Republic of Lithuania in the European Union also implies the constitutional obligation of the Republic of Lithuania to properly implement the requirements of European Union law; European Union law is a source of interpretation of the law of the Republic of Lithuania, *inter alia*, the Constitution, in those areas in which, under Article 1 of the

Constitutional Act on Membership of the Republic of Lithuania in the European Union, the Republic of Lithuania shares with or confers on the European Union the competences of its state institutions. ... there are no grounds for interpreting the provisions of the Constitution ... related to the areas assigned to [the shared competence between the European Union and the Member States] in a manner different from that in which these areas are regulated under European Union law.

13.2. NATIONAL DEFENCE

The constitutional foundations of national defence (Paragraph 2 of Article 3 and Paragraph 1 of Article 139 of the Constitution)

The Constitutional Court's ruling of 24 September 2009

Paragraph 2 of Article 3 of the Constitution provides that the Nation and each citizen have the right to resist anyone who encroaches on the independence, territorial integrity, and constitutional order of the State of Lithuania by force.

Article 139 of the Constitution prescribes: the defence of the State of Lithuania against a foreign armed attack is the right and duty of each citizen of the Republic of Lithuania (Paragraph 1); the citizens of the Republic of Lithuania must perform military or alternative national defence service according to the procedure established by law (Paragraph 2).

[...]

The provisions of Articles 3 and 139 of the Constitution ... consolidate the principles of the defence of the State of Lithuania, the defence of its independence and territorial integrity, the defence of the constitutional order and national defence, as well as the related rights and duties of citizens. These provisions of the Constitution are interrelated and, together with other provisions and principles of the Constitution, compose the integral system of the constitutional regulation of national defence; therefore, they must also be interpreted in a systemic manner, *inter alia*, in the context of the constitutional principle of a state under the rule of law.

As mentioned before, Paragraph 2 of Article 3 of the Constitution consolidates the right of each citizen to resist anyone who encroaches on the independence, territorial integrity, and constitutional order of the State of Lithuania by force.

In its ruling of 23 November 1999, the Constitutional Court held the following: "The constitutional order of the Republic of Lithuania is based on the priority of the rights and freedoms of individuals and citizens as the ultimate value, as well as on the principles establishing the sovereignty of the Nation, the independence and territorial integrity of the state, democracy, the republic as the form of government, the separation of powers, their independence and balance, local self-government, etc. The protection of the constitutional order means that it is not permitted that the social, economic, and political relationships established in the Constitution, which constitute the foundations of the life of individuals, society and the state, be encroached upon."

The Constitutional Court has held on more than one occasion that the state is the organisation of all society (rulings of 25 November 2002, 4 March 2003, 30 September 2003, 3 December 2003, and 30 December 2003). ...

... there is a special legal link between the state and its citizens. ... Citizenship determines the legal status of a person; the fact that a certain person holds citizenship constitutes the precondition for that person to exercise all rights and freedoms consolidated in the Constitution and laws, as well as to perform the established duties ... Under the Constitution, only citizens of the Republic of Lithuania ... have certain duties: the duty to defend the State of Lithuania against a foreign armed attack (Paragraph 1 of Article 139 of the Constitution) and the duty to perform military or alternative national defence service (Paragraph 2 of Article 139 of the Constitution).

The following constitutional provisions and principles are linked with national security, with the protection of sovereignty and the constitutional order, and with the national foreign and defence policy, *inter alia*: the Lithuanian Nation, having for centuries staunchly defended its freedom and independence,

adopts and proclaims the Constitution (Preamble to the Constitution); the State of Lithuania is an independent democratic republic (Article 1); the State of Lithuania is created by the Nation; sovereignty belongs to the Nation (Article 2); no one may restrict or limit the sovereignty of the Nation or arrogate to himself/herself the sovereign powers belonging to the entire Nation (Paragraph 1 of Article 3); in implementing its foreign policy, the Republic of Lithuania follows the universally recognised principles and norms of international law, seeks to ensure national security and independence, the welfare of its citizens, and their basic rights and freedoms, and contributes to the creation of the international order based on law and justice (Paragraph 1 of Article 135); the Republic of Lithuania participates in international organisations provided that this is not in conflict with the interests and independence of the state (Article 136); there may not be any weapons of mass destruction and foreign military bases on the territory of the Republic of Lithuania (Article 137); the main issues of national defence are considered and coordinated by the State Defence Council, which consists of the President of the Republic, the Prime Minister, the Speaker of the Seimas, the Minister of National Defence, and the Commander of the Armed Forces (Paragraph 1 of Article 140); the Seimas shall impose martial law, announce mobilisation or demobilisation, or adopt the decision to use the armed forces when the need arises to defend the Homeland or to fulfil the international obligations of the State of Lithuania (Paragraph 1 of Article 142); in the event of an armed attack threatening the sovereignty of the State or its territorial integrity, the President of the Republic immediately adopts a decision on defence against the armed aggression, imposes martial law throughout the state or in its separate part, or announces mobilisation, and submits these decisions for approval at the next sitting of the Seimas, or immediately convenes an extraordinary session in the period between sessions of the Seimas (Paragraph 2 of Article 142); the state takes care of and provides for servicemen who lose their health during military service, as well as for the families of servicemen who lose their lives or die during military service (Paragraph 1 of Article 146); the state provides for citizens who lose their health while defending the state, as well as for the families of citizens who lose their lives or die in defence of the state (Paragraph 2 of Article 146); all these constitutional provisions and principles imply the conclusion that the independence of the state, its territorial integrity, and its constitutional order are among the most important constitutional values, the protection of which is the priority obligation of the state authorities and all citizens. Ensuring the performance of this duty is a guarantee of national security. In order that the citizens, who have the constitutional duty to defend the state against a foreign armed attack, could properly implement this duty, they must be well-prepared for that. Such preparation is ensured, *inter alia*, by military service.

Thus, the constitutional duty of citizens to perform military or alternative national defence service, which is consolidated in Paragraph 2 of Article 139 of the Constitution, is not an objective in itself – it is directly related to the duty, which is consolidated in Paragraph 1 of Article 139 of the Constitution, to defend the state against a foreign armed attack, as well as, in a certain aspect, to the right of citizens, which is consolidated in Paragraph 2 of Article 3 of the Constitution, to resist anyone who encroaches on the independence, territorial integrity, and constitutional order of the state.

Military service

The Constitutional Court's ruling of 24 September 2009

In its ruling of 13 December 2004, the Constitutional Court held that some functions of the state are fulfilled, primarily or mainly, through civil state (and municipal) institutions, whereas others are performed through military and/or paramilitary state institutions. It has also been held that, under the Constitution, state service is service to the State of Lithuania and the civil Nation; therefore, state service should be loyal to the State of Lithuania and its constitutional order; the Constitution does not tolerate such situations where a certain level of the system of state service, a certain state or municipal institution or individual state servants act contrary to the interests of the State of Lithuania or violate the constitutional order of the State of Lithuania. In the said ruling, it was also held that the constitutional imperative of the loyalty of state service to the State of Lithuania also raises special requirements for state service: state servants not only

must not violate the Constitution and laws themselves, but also have the duty to take all necessary positive actions when protecting the constitutional order of the State of Lithuania.

... the independence of the state, its territorial integrity, and its constitutional order are among the most important constitutional values the protection of which is the priority obligation of the state authorities and all citizens. Therefore, the function of national defence, where such a function gives priority to the protection of constitutional values, requires a separate institutional system, which is composed of military and paramilitary state institutions. Service in this system constitutes one of the forms of the constitutional institution of state service, as service to the State of Lithuania and its civil Nation; this form of the constitutional institution of state service also includes military service, which directly ensures the performance of the function of national defence. Therefore, service in paramilitary and military institutions is subject to the basic constitutional requirements applicable to state service, *inter alia*, the requirement of loyalty to the state.

In this context, it needs to be noted that, even though the constitutional concept of state service includes military service, nevertheless, in view of the constitutional importance of the function of national defence (carried out by military service), which, as mentioned before, includes the protection of the priority constitutional values, military service is separated from the system of civil service.

The Constitutional Court has held that, under the Constitution, civil service is regarded as separate from military service, paramilitary service, or security service; the Constitution consolidates a differentiated concept of civil state institutions, on the one hand, and military and paramilitary state institutions, on the other hand; the said concept creates the legal preconditions for establishing, by means of legal acts, a differentiated regulation of relationships connected with the activities of civil state institutions and military and paramilitary state institutions, as well as for establishing such a legal status of persons working in civil and military and paramilitary state institutions that is distinguished by certain particularities (rulings of 24 December 2002 and 13 December 2004).

In this context, it needs to be noted that, under Article 140 of the Constitution, the main issues of national defence are considered and coordinated by the State Defence Council, which consists of the President of the Republic, the Prime Minister, the Speaker of the Seimas, the Minister of National Defence, and the Commander of the Armed Forces. The State Defence Council is headed by the President of the Republic (Paragraph 1); the President of the Republic is the Commander-in-Chief of the Armed Forces of the State (Paragraph 2); the Government, the Minister of National Defence, and the Commander of the Armed Forces are responsible to the Seimas for the administration and command of the armed forces of the State (Paragraph 3); the Minister of National Defence may not be a serviceman who is not yet retired to the reserve (Paragraph 3). It also needs to be noted that, under Article 141 of the Constitution, persons performing actual military service or alternative service, as well as the officers of the national defence system, the police, and the interior, non-commissioned officers, re-enlistees, and other paid officials of paramilitary and security services who are not retired to the reserve, may not be members of the Seimas or members of municipal councils, nor may they hold any elective or appointive office in civil state service.

The ... constitutional provisions and principles linked with national security, with the protection of sovereignty and the constitutional order, with the national foreign and defence policy, with organising the system of national defence, as well as the aforementioned statements of the official constitutional doctrine related to the interpretation of the constitutional concept of state service, imply the constitutional concept of military service where this concept includes the following most important aspects: military service is intended for carrying out the functions of national defence; therefore, it is one of the types of state service, but it is separated from civil service; military service guarantees the protection of the constitutional values of the utmost importance – the independence, territorial integrity, and constitutional order of the state – and the defence of the state against a foreign armed attack; the subjects of military service have a specific legal status; however, they are subject to special requirements and prohibitions; *inter alia*, Article 141 of the Constitution prohibits the said subjects from being members of the Seimas or members of municipal councils and from holding an elective or appointive office in civil state service; the legal regulation

governing military service, which is one of the foundations of the national defence system, is the constitutional prerogative of the legislature consolidated in Paragraph 3 of Article 139 of the Constitution.

The duty of citizens to perform actual military service or alternative national defence service and to defend the state against a foreign armed attack; the legal regulation governing the organisation of the national defence system (*inter alia*, military service) and the defence of the state against a foreign armed attack (Article 139 of the Constitution)

The Constitutional Court's ruling of 24 September 2009

... Paragraph 2 of Article 139 of the Constitution provides for the duty to perform military or alternative national defence service; however, the Constitution does not *expressis verbis* establish all possible types of military service, or the forms of mandatory military service, or requirements for the subjects of military service. ... the Constitution also does not *expressis verbis* consolidate the duty to perform such mandatory military service that is named in laws as initial mandatory military service. The Constitution assigns the legislature to establish the organisation of the national defence system. Thus, the Constitution consolidates the prerogative of the legislature to establish, while paying regard to the norms and principles of the Constitution, the regulation governing the national defence system, *inter alia*, the regulation governing military service.

In this context, it needs to be noted that the constitutional concept of mandatory military service, which is consolidated in Paragraph 2 of Article 139 of the Constitution, may not be identified with the notion of actual military service, which is used in Article 141 of the Constitution. The grounds for the organisation of actual military service may be very varied ones. ... actual military service may be organised on the grounds of professional military service or on the grounds of voluntary and mandatory military service (or several said types of service). It is the discretion of the legislature to establish the legal regulation governing the organisation of actual military service. However, no matter how actual military service is organised, the legislature must establish the legal regulation to the effect that the constitutional mission of such service – ensuring the preparedness to defend and the defence of the state against a foreign armed attack – would not be denied.

While regulating, by means of laws, the relationships linked with the organisation of the national defence system, *inter alia*, the organisation of military service, the legislature has rather broad discretion. For example, it may, by means of a law, establish certain types of military service, the forms of mandatory military service, requirements in connection with age or health, and other requirements for the subjects of military service, the procedure for performing military service, the conditions of exemption from mandatory military service linked with the circumstances due to which citizens may not perform such service (age, the state of health, etc.).

However, when implementing the said discretion, the legislature must pay regard to the norms and principles of the Constitution. *Inter alia*, Paragraph 2 of Article 5 of the Constitution, which provides that the scope of powers is limited by the Constitution, and the constitutional principle of a state under the rule of law give rise to such a requirement.

[...]

... while implementing the discretion, which is established in Paragraph 3 of Article 139 of the Constitution, to regulate the organisation of national defence, the legislature must pay regard to the norms and principles of the Constitution – the legislature must, by means of laws, establish such a regulation of the organisation of the national defence system, *inter alia*, that of the organisation of military service (including mandatory military service), that would ensure the protection of the main constitutional values – the independence, territorial integrity, and constitutional order of the state – and the adequate defence of the state against a foreign armed attack.

[...]

... the Constitution, *inter alia*, the provisions of Articles 3, 139, 141, and 142 thereof, gives rise to the duty of the legislature to establish such a legal regulation under which the Republic of Lithuania must have a regular and well-organised army, capable of performing its constitutional functions, *inter alia*, its

obligation to defend the state against a foreign armed attack. However, in regulating the relationships in connection with the organisation of national defence, *inter alia*, the organisation of the armed forces, the legislature has rather broad discretion. ... when paying regard to the norms and principles of the Constitution, the legislature may choose various models of the armed forces and the forms of military service. The Constitution does not prohibit establishing such a legal regulation under which the Lithuanian armed forces, whose mission is to protect and defend the state and its citizens from an armed attack, would be organised on the grounds of professional and voluntary military service. Article 139 of the Constitution may not be interpreted as meaning that the armed forces must be organised only on the grounds of mandatory military service and that every citizen has the duty to perform such obligatory military service that is named in laws as initial mandatory military service.

It also needs to be noted that the legislature, having consolidated, in a law, such a model of the organisation of the armed forces under which the armed forces are organised on the basis of professional and voluntary military service, must pay regard to the provisions of the Constitution, *inter alia*, to the imperative, which is consolidated in Paragraph 1 of Article 139 of the Constitution, that the defence of the State of Lithuania against a foreign armed attack is the right and duty of each citizen of the Republic of Lithuania. In this context, it needs to be emphasised that the formation of the armed forces organised on the basis of professional and voluntary military service does not deny the constitutional obligation of citizens to defend the State of Lithuania against a foreign armed attack; at the same time, the legislature is not exempted from the duty to establish such a legal regulation that would create the legal preconditions for the adequate training of citizens so that they could fulfil this constitutional obligation.

[...]

... the phrase “The citizens of the Republic of Lithuania must perform military ... service”, which is consolidated in Paragraph 2 of Article 139 of the Constitution, may not be interpreted in the same way as ordinary law interprets the concept of mandatory military service. While interpreting this phrase, which is consolidated in the Constitution, regard must be paid to the constitutional meaning and mission of the institution of military service. As mentioned before, the constitutional mission of military service, *inter alia*, mandatory military service, is to ensure the preparedness to defend the state against a foreign armed attack and its defence. Mandatory military service is necessary so that the citizens would be prepared to defend the state; however, this does not mean that this preparedness may be carried out only in one way – by performing initial mandatory military service and that each citizen has the duty to perform namely initial mandatory military service. The constitutional duty of citizens to perform military service and to prepare for the defence of the state against a foreign armed attack may be fulfilled in various forms, the variety of which is implied, *inter alia*, by the variety of the means of national defence. Therefore, the legislature, while regulating the relationships linked with military service, must pay regard to the constitutional mission of this service and establish such a legal regulation that would ensure the implementation of the constitutional purposes of military service, i.e. the adequate training of citizens for the defence of the state against a foreign armed attack. In this context, it needs to be noted that, as mentioned before, while regulating the relationships of military service, the legislature may establish, *inter alia*, the conditions for exemption from mandatory military service linked with the objective circumstances due to which citizens may not perform such service, i.e. age, the state of health, etc.

[...]

The Constitution, *inter alia*, Article 142 thereof, consolidates the institution of mobilisation. The concept of mobilisation is universally interpreted as meaning the preparation of the systems of state governance and economy, as well as of the armed forces, for martial law, *inter alia*, by calling up the citizens of the state to the armed forces when there is a threat of an armed attack against the state or a war begins. Under the Constitution, *inter alia*, Articles 139 and 142 thereof, the purpose of mobilisation is to organise the defence of the state against a foreign armed attack. One of the means to ensure mobilisation is the call-up of citizens to perform mandatory military service. In this context, it needs to be noted that the legislature has the constitutional duty to regulate, by means of laws, the procedure of performing mandatory military service in the event of mobilisation where the said procedure would ensure the defence of the state

against armed aggression. In addition, the legislature must also establish such a legal regulation that would create the legal preconditions for the adequate training of citizens in advance so that, when mobilisation is announced, they could properly fulfil their constitutional duty to defend the state. Therefore, in the state, there must be not only regular armed forces, but also the necessary number of citizens properly trained to defend the state.

While regulating the institution of mandatory military service, the legislature must take into consideration not only the provisions of Paragraph 2 of Article 139 of the Constitution, which consolidates, *inter alia*, certain constitutional grounds of mandatory military service, but also other provisions of the Constitution, constitutional values and constitutional principles, *inter alia*, the constitutional principles of the State of Lithuania, its independence, territorial integrity, the defence of the constitutional order, and national defence. The protection of the said constitutional values is ensured, *inter alia*, by establishing the system including both military service and the preparedness of citizens to defend the state; the said system also covers the institution of mandatory military service. Therefore, in regulating the legal relationships of the national defence system, *inter alia*, the relationships of military service, the legislature must pay regard to the constitutional provisions and principles that give rise to the obligation to ensure the adequate national defence. Thus, such a legal regulation must be established by taking account of the geopolitical situation and other factors that influence national security. The legislature must assess possible threats to national security, long-term political processes, the participation of the state in the organisations of mutual assistance of states, the international obligations of the state in security missions, peacekeeping missions, etc.

Only such a legal regulation governing the national defence system, *inter alia*, the legal regulation governing military service, would not be in conflict with the Constitution where the said legal regulation would be established by taking account of possible threats to national security and would ensure the defence of the state against a foreign armed attack, *inter alia*, would ensure the adequate training of citizens for the defence of the state against a foreign armed attack.

In this context, it needs to be noted that the notion of the training of citizens to defend the state is rather broad, including not exclusively the training of citizens to defend the state against a foreign armed attack by means of arms. The preparedness to defend the state may not be understood only as service for gaining military training. The needs and means of national defence may be very diverse, including not only the expansion of the armed forces and of armaments in order to strengthen the military power of the state, but also the informational-technological, industrial, and other means of a similar nature, which are not directly related to armed defence but, from a certain aspect, help strengthen the military power of the state. This diversity also determines the diversity of the specific ways of training citizens for national defence.

[...]

... such preconditions must be created for citizens who fulfil their constitutional duties, *inter alia*, the duty to defend the state against a foreign armed attack, that would enable them to prepare adequately to fulfil this duty. Otherwise, i.e. without the adequate training of citizens to fulfil their constitutional duty to defend the state against a foreign armed attack, there would be, *inter alia*, not only an unreasonably big threat to the health and/or life of citizens who, while being not adequately trained, are called up to defend their country against a foreign armed attack, but also such citizens would, in general, be unable to perform the duty, which arises from the Constitution, to defend their state; therefore, the duty consolidated in Paragraph 1 of Article 139 of the Constitution would be denied.

Consequently, the discretion of the legislature to establish the legal regulation of the organisation of the national defence system, *inter alia*, of the organisation of military service and national defence against a foreign armed attack (where national defence would also, in certain cases, be carried out by way of mobilisation, which is provided for in the Constitution), must be exercised by taking account of the constitutional rights of a citizen, of the right of a citizen to fulfil his/her duty to defend the state (*inter alia*, to perform mandatory military service in the event of mobilisation) while being adequately trained to do so.

Thus ... when the legislature reorganises the national defence system, *inter alia*, by switching to the armed forces organised on the grounds of professional and voluntary military service and providing for the additional grounds for the postponement of initial mandatory military service, the Constitution, *inter alia*, the constitutional principles of a state under the rule of law, the separation of powers, responsible governance, the protection of legitimate expectations, legal clarity, and other principles give rise to the duty of the legislature to establish such a legal regulation governing the military service system that would lay down efficient means (which are different from initial mandatory military service, for example, mandatory military training, participation in the activity of organisations that are assigned to the national defence system, general events organised by the national defence system, etc.) of the training of citizens who have the duty to perform mandatory military service to defend the state – the means that would ensure the adequate training of citizens so that they could fulfil the constitutional duty to defend the state against a foreign armed attack (*inter alia*, in the event of mobilisation).

[...]

... when adopting the legal acts ... that provide that the national defence system should be reorganised by switching to the armed forces organised on the grounds of professional and voluntary military service, the legislature must assess the geopolitical situation of the state from the point of view of reality and the possibilities of national defence.

[...]

... the Republic of Lithuania, while seeking to protect the values that are *expressis verbis* consolidated in the Constitution – the independence, territorial inviolability, and constitutional order of the state, must organise the national defence system, *inter alia*, military service, so that the state would have well-prepared regular military units that would be ready to react rapidly to threats to national security and would be formed on the basis of military service. They may be armed forces formed on the basis of both voluntary military service and mandatory military service or on the basis of professional military service (or on the basis of the said several types of military service) where such armed forces would be able to carry out the functions of national defence. Under the Constitution, *inter alia*, Paragraph 2 of Article 139 thereof, a concrete model of the armed forces must be established by the legislature.

[...]

As mentioned before, when the organisation of military service is regulated by means of laws, the institution of military obligation (mandatory military service), which is provided for in Paragraph 2 of Article 139 of the Constitution, must be ensured; the forms of the said institution are not *expressis verbis* defined in Paragraph 2 of Article 139 of the Constitution. ...

... it also follows from the provisions of the Constitution, consolidated, *inter alia*, in Paragraph 1 of Article 139 and Article 142, that, in cases where mobilisation is announced in accordance with the procedure established by law, *inter alia*, in the event of a foreign armed attack, the constitutional duty arises for citizens to perform mandatory military service. The legislature has the constitutional obligation to regulate, by means of laws, the procedure of performing mandatory military service in the event of mobilisation where the said procedure would ensure the defence of the state against armed aggression. Taking account of this, it also needs to be noted that the legislature must establish such a legal regulation whereby the legal preconditions would be created for the proper preparation of citizens for mobilisation.

[...]

... The Constitution, *inter alia*, Paragraph 2 of Article 3 and Article 139 thereof, gives rise to the duty of the legislature, when reorganising the system of military service and the structure of the armed forces, to establish such a legal regulation that would ensure the proper organisation of the armed forces, the continuous performance of the functions of the armed forces linked with the ensuring of national defence, and the adequate training of citizens to defend the state against a foreign armed attack, *inter alia*, by the efficient means of preparation that are other than initial mandatory military service, by providing, in laws, for the concrete methods of the training of citizens, the procedure of implementing the said methods, etc.

The constitutional foundations of national defence

The Constitutional Court's ruling of 15 March 2011

The general constitutional foundations of state defence are consolidated in various provisions of the Constitution.

Article 3 of the Constitution provides that no one may restrict or limit the sovereignty of the Nation or arrogate to himself/herself the sovereign powers belonging to the entire Nation (Paragraph 1); the Nation and each citizen have the right to resist anyone who encroaches on the independence, territorial integrity, and constitutional order of the State of Lithuania by force (Paragraph 2).

Article 8 of the Constitution prescribes that the seizure of state power or state institutions by force is considered anti-constitutional actions, which are unlawful and invalid.

Article 139 of the Constitution provides that the defence of the State of Lithuania against a foreign armed attack is the right and duty of each citizen of the Republic of Lithuania (Paragraph 1); the citizens of the Republic of Lithuania must perform military or alternative national defence service according to the procedure established by law (Paragraph 2); the organisation of national defence is established by law (Paragraph 3).

Article 140 of the Constitution states that the main issues of national defence are considered and coordinated by the State Defence Council, which consists of the President of the Republic, the Prime Minister, the Speaker of the Seimas, the Minister of National Defence, and the Commander of the Armed Forces. The State Defence Council is headed by the President of the Republic. The procedure for its formation and activities, as well as its powers, must be established by law (Paragraph 1); the President of the Republic is the Commander-in-Chief of the Armed Forces of the State (Paragraph 2); the Government, the Minister of National Defence, and the Commander of the Armed Forces are responsible to the Seimas for the administration and command of the armed forces of the State; the Minister of National Defence may not be a serviceman who is not yet retired to the reserve (Paragraph 3).

Item 20 of Article 67 of the Constitution, wherein the list of the constitutional powers of the Seimas is consolidated, provides that "The Seimas ... shall impose ... martial law, declare states of emergency, announce mobilisation, and adopt a decision to use the armed forces".

The powers of the Seimas established in Item 20 of Article 67 of the Constitution, which are related to the use of the armed forces, are particularised in Paragraph 1 of Article 142 of the Constitution, wherein it is prescribed that "The Seimas shall impose martial law, announce mobilisation or demobilisation, or adopt the decision to use the armed forces when the need arises to defend the Homeland or to fulfil the international obligations of the State of Lithuania".

[...]

Article 84 of the Constitution consolidates the list of the constitutional powers of the President of the Republic; Item 16 of this article provides that "The President of the Republic ... shall, in the event of an armed attack threatening the sovereignty of the State or its territorial integrity, adopt decisions concerning defence against the armed aggression, the imposition of martial law, as well as mobilisation, and submit these decisions for approval at the next sitting of the Seimas".

The powers of the President of the Republic consolidated in Item 16 of Article 84 of the Constitution are particularised in Paragraph 2 of Article 142 of the Constitution, wherein it is established: "In the event of an armed attack threatening the sovereignty of the State or its territorial integrity, the President of the Republic shall immediately adopt a decision on defence against the armed aggression, impose martial law throughout the State or in its separate part, or announce mobilisation, and submit these decisions for approval at the next sitting of the Seimas, or immediately convene an extraordinary session in the period between sessions of the Seimas. The Seimas shall approve or overrule the decision of the President of the Republic."

... under the legal regulation established in Paragraph 2 of Article 142 of the Constitution, in the event of an armed attack that threatens the sovereignty of the state or its territorial integrity, a decision immediately adopted by the President of the Republic on the defence against the armed aggression, on the

imposition of martial law throughout the state or in its separate part, or on the announcement of mobilisation acquires legal force from the moment of its adoption; however, the President of the Republic must submit this decision for approval at the next sitting of the Seimas (in the period between sessions of the Seimas, an extraordinary session of the Seimas must be convened immediately for this purpose); whereas the Seimas has the right to approve or overrule the decision of the President of the Republic.

In this context, it needs to be noted that Paragraph 2 of Article 140 of the Constitution, wherein it is prescribed that the President of the Republic is the Commander-in-Chief of the Armed Forces of the State, gives rise to the specific constitutional powers of the President of the Republic that are related, *inter alia*, to those established in Paragraph 2 of Article 142 of the Constitution. Under the Constitution, *inter alia*, the provision of Paragraph 2 of Article 5 thereof, whereby the scope of powers is limited by the Constitution, these specific constitutional powers of the President of the Republic as the Commander-in-Chief of the Armed Forces of the State may not be granted to any other subject by means of a law or another legal act.

[...]

... the legislature may also establish such powers of the President of the Republic that, though not *expressis verbis* specified in the Constitution, are in line with the constitutional legal status of the President of the Republic as the Commander-in-Chief of the Armed Forces of the State.

Article 94 of the Constitution consolidates the provision that the Government of the Republic of Lithuania protects the territorial inviolability of the Republic of Lithuania and guarantees state security.

Consequently, under the Constitution, *inter alia*, Article 140 thereof, in the course of deliberating and deciding national defence issues, various state institutions and officials take part, *inter alia*, the State Defence Council, which considers and coordinates the main issues of state defence (which consists of the President of the Republic, the Prime Minister, the Speaker of the Seimas, the Minister of National Defence, and the Commander of the Armed Forces), the Government, the Minister of National Defence, and the Commander of the Armed Forces, who are responsible to the Seimas for the administration and command of the armed forces of the state; however, decisions on the main issues of national defence are taken by two state institutions: the Seimas and the President of the Republic. The Seimas is empowered to adopt final decisions on the imposition of martial law, on the announcement of mobilisation and demobilisation, and on the adoption of the decision to use the armed forces when the need arises to defend the Homeland or to fulfil the international obligations of the State of Lithuania; whereas the President of the Republic, in the event of an armed attack threatening the sovereignty of the state or its territorial integrity, has the powers to immediately adopt such decisions (concerning defence against the armed aggression, the imposition of martial law throughout the state or in its separate part, and the announcement of mobilisation) that are submitted for approval at the next sitting of the Seimas.

It should be noted that the Seimas, while implementing its constitutional power, which is consolidated in Paragraph 2 of Article 142 of the Constitution, to approve or overrule a decision of the President of the Republic concerning defence against armed aggression, the imposition of martial law, as well as the announcement of mobilisation in the event of an armed attack threatening the sovereignty of the state or its territorial integrity, is bound by the values consolidated in the Constitution and constitutionally important objectives, *inter alia*, by the independence of the state and the fulfilment of international obligations.

In this context, it should be noted that, as mentioned before, Article 139 of the Constitution provides that the defence of the State of Lithuania against a foreign armed attack is the right and duty of each citizen of the Republic of Lithuania (Paragraph 1); the citizens of the Republic of Lithuania must perform military or alternative national defence service according to the procedure established by law (Paragraph 2); the organisation of national defence is established by law (Paragraph 3).

When interpreting these provisions of the Constitution, as well as other provisions of the Constitution related to the said provisions, in its ruling of 24 September 2009, the Constitutional Court held:

– the Constitution, *inter alia*, the provisions of Articles 3 and 139 thereof, gives rise to the duty of the legislature to establish such a legal regulation under which the Republic of Lithuania must have a regular

and well-organised army, capable of performing its constitutional functions, *inter alia*, its obligation to defend the state against a foreign armed attack;

– under the Constitution, a legal regulation governing national defence must be established by taking account of the geopolitical situation and other factors that influence national security; the legislature must assess possible threats to national security, long-term political processes, the participation of the state in the organisations of mutual assistance of states, the international obligations of the state in security missions, peacekeeping missions, etc.;

– the Republic of Lithuania, while seeking to protect the values that are *expressis verbis* enshrined in the Constitution – the independence, territorial inviolability, and constitutional order of the state, as well as while fulfilling the constitutionally justifiable obligations arising from international treaties, must organise the national defence system, *inter alia*, military service, so that the state would have well-prepared regular military units that would be ready to react rapidly to threats to state security, would be able to participate in collective defence operations and peacekeeping missions, and would be formed on the basis of military service.

In this context, it also needs to be noted that the Constitution, *inter alia*, the constitutional requirement that Lithuanian state power be organised in a democratic manner, the constitutional imperative of an open, just, and harmonious society, and the constitutional principle of responsible governance, means that military state institutions may not have priority over civil state institutions, that decisions made by military state institutions and officials must be based on decisions adopted by civil state institutions, and that military state institutions must be accountable to civil state institutions and must be controlled by them. Democratic civil control over military state institutions (armed forces) is a necessary precondition for civil democratic governance and, thus, also for a state under the rule of law.

[...]

... the general constitutionally consolidated foundations of international cooperation carried out by the state where such cooperation is related, *inter alia*, to the defence of the state, are characterised, *inter alia*, by the consolidation of the geopolitical orientation of the State of Lithuania – the participation of the state in European integration as a Member of the European Union and the striving of the state to ensure national independence and security by contributing to the creation of the international order based on law and justice.

... the geopolitical orientation of the State of Lithuania – the participation of the state in European integration – is inseparable from other international obligations of the Republic of Lithuania arising from the membership of Lithuania in other international organisations, *inter alia*, the United Nations and the North Atlantic Treaty Organisation; this membership provides Lithuania not only with additional security guarantees, but also implies the necessity to observe the international obligations undertaken by it.

In this context, it needs to be noted that the provisions of the Constitution whereby the general constitutional foundations of national defence and international cooperation (foreign policy) are consolidated are related, *inter alia*, to the fact that, under Paragraph 1 of Article 138 of the Constitution, the Seimas ratifies the international treaties of the Republic of Lithuania on political cooperation with foreign states, mutual assistance treaties, as well as treaties of a defensive nature related to the defence of the state (Item 2), on the renunciation of the use of force or threatening by force, as well as peace treaties (Item 3), on the presence and status of the armed forces of the Republic of Lithuania on the territories of foreign states (Item 4), and on the participation of the Republic of Lithuania in universal international organisations and regional international organisations (Item 5). The power of the Seimas, which is consolidated in Paragraph 1 of Article 142 of the Constitution, to adopt the decision to use the armed forces when the need arises to defend the Homeland or to fulfil the international obligations of the State of Lithuania also includes such a decision to use the armed forces when it is necessary to fulfil the international obligations of the Republic of Lithuania under international treaties of the Republic of Lithuania.

The aforesaid provisions of the Constitution imply that the ensuring of the independence and security of the state, *inter alia*, by using the armed forces, may, under the Constitution, be carried out both on the national and international scale (level).

[...]

... when the law provides for ensuring the independence and security of the state on the international scale (level), it is necessary to pay regard, *inter alia*, to the rule, established in Article 142 of the Constitution, according to which two state institutions are constitutionally empowered to adopt decisions on the main issues of national defence, i.e. the Seimas adopts final decisions, whereas the President of the Republic immediately (in the event of a threat) adopts such decisions that are submitted for approval at the next sitting for the Seimas. While paying regard to this rule of the delimitation and coordination of the powers of the Seimas and the President of the Republic in the area of national defence, which is consolidated in Article 142 of the Constitution, the legislature, under Paragraph 2 of Article 140 of the Constitution, wherein it is stipulated that the President of the Republic is the Commander-in-Chief of the Armed Forces of the State, may also establish a legal regulation under which the President of the Republic would be empowered to immediately adopt a decision on the defence against armed aggression not only in the event of an armed attack threatening the sovereignty of the state or its territorial integrity, as provided for in Item 16 of Article 84 and Paragraph 2 of Article 142 of the Constitution, but also in the event (as provided for in a collective defence treaty ratified by the Seimas) of an armed attack against the Republic of Lithuania and a state that is its ally in cases where such a decision must immediately be submitted for approval at the next sitting of the Seimas.

[...]

... under the Constitution, *inter alia*, Articles 135 and 136 thereof, the legislature, while regulating the implementation (fulfilment) of the rights and obligations that could arise or arise from the international treaties of the Republic of Lithuania, *inter alia*, a collective defence treaty ratified by the Seimas, and while paying regard to the powers (related to the use of the armed forces) of the Seimas and the President of the Republic, as established in Article 142 of the Constitution, has the discretion to determine also other state institutions that may adopt decisions on the participation of the units of the armed forces in international military exercises.

In this context, it should be noted that, as mentioned before, under Paragraph 3 of Article 140 of the Constitution, the Government, the Minister of National Defence, and the Commander of the Armed Forces are responsible to the Seimas for the administration and command of the armed forces of the State.

Thus, under the Constitution, the legislature may also establish such a legal regulation under which the Seimas, the Government, and the Minister of National Defence are granted the powers to send military units (of a certain size) of the Republic of Lithuania to another state for participation in international military exercises or other international military events.

The constitutional foundations of international cooperation carried out by the state in relation, *inter alia*, to national defence

See 13.1. Foreign policy, the ruling of 15 March 2011 (“The constitutional foundations of international cooperation carried out by the state; the geopolitical orientation of the state”).

There may not be any foreign military bases on the territory of the Republic of Lithuania (Article 137 of the Constitution); there may be no military bases or army units of Russia, or the Commonwealth of Independent States or its constituent states, on the territory of the Republic of Lithuania (Article 3 of the Constitutional Act on the Non-Alignment of the Republic of Lithuania to Post-Soviet Eastern Unions)

The Constitutional Court’s ruling of 15 March 2011

... in the course of implementing the constitutional provisions on national defence and international cooperation related thereto, it is not allowed, *inter alia*, to disregard the prohibitions established in

Article 137 of the Constitution and the Constitutional Act on the Non-Alignment of the Republic of Lithuania to Post-Soviet Eastern Unions.

Article 137 of the Constitution provides that there may not be any weapons of mass destruction and foreign military bases on the territory of the Republic of Lithuania.

The Constitutional Act on the Non-Alignment of the Republic of Lithuania to Post-Soviet Eastern Unions, which is a constituent part of the Constitution and was adopted while “invoking the 16 February 1918 and 11 March 1990 Acts on the Restoration of the Independent State of Lithuania and acting upon the will of the entire Nation, as expressed on 9 February 1991” (Preamble), consolidates the principled provision “To develop mutually advantageous relations with each state that was formerly a component of the USSR, but never join, in any form, any new political, military, economic, or other unions or commonwealths of states formed on the basis of the former USSR” (Article 1). In addition, the Constitutional Act provides that any activities seeking to draw the State of Lithuania into the unions or commonwealths of states specified in the first article of this Constitutional Act are regarded as hostile to the independence of Lithuania, and responsibility for them is established by law (Article 2); there may be no military bases or army units of Russia, or the Commonwealth of Independent States or its constituent states, on the territory of the Republic of Lithuania (Article 3).

... the provision of Article 137 of the Constitution that there may not be any foreign military bases on the territory of the Republic of Lithuania, *inter alia*, means that on the territory of the Republic of Lithuania there may not be any such military bases that are directed and controlled by foreign states. Such a prohibition, *inter alia*, does not mean that on the territory of the Republic of Lithuania there may not be any such military bases that, under the international treaties of the Republic of Lithuania, *inter alia*, a collective defence treaty ratified by the Seimas, are directed and controlled by the Republic of Lithuania jointly (together) with its states-allies.

... Article 3 of the Constitutional Act on the Non-Alignment of the Republic of Lithuania to Post-Soviet Eastern Unions stipulates the imperative that there may be no military bases or army units of Russia, the Commonwealth of Independent States, or its constituent states, on the territory of the Republic of Lithuania, i.e. the said article establishes:

- the constitutional prohibition on the presence of any military bases of Russia, the Commonwealth of Independent States, or its constituent states on the territory of the Republic of Lithuania; this prohibition means, *inter alia*, that, on the territory of the Republic of Lithuania, there may not be any such military bases that are directed or controlled by Russia, the Commonwealth of Independent States, or its constituent states;

- the constitutional prohibition on the presence of any army units of Russia, the Commonwealth of Independent States, or its constituent states on the territory of the Republic of Lithuania. This prohibition means, *inter alia*, that, on the territory of the Republic of Lithuania, there may not be any such army units the presence (deployment, use) of which is directed or controlled by Russia, the Commonwealth of Independent States, or its constituent states. Such a prohibition does not mean that, under the international treaties of the Republic of Lithuania, *inter alia*, a collective defence treaty ratified by the Seimas, and in accordance with the laws adopted for the purpose of the implementation of these treaties, any such short-term presence of the limited-size military units of Russia, the Commonwealth of Independent States, or its constituent states in international military exercises held on the territory of the Republic of Lithuania and directed and controlled by the Republic of Lithuania jointly (together) with its states-allies is not allowed. The said constitutional prohibition also does not mean that, under the international treaties of the Republic of Lithuania and in accordance with the laws adopted for the purpose of the implementation of these treaties, it would not be allowed to invite any limited-size military units of Russia, the Commonwealth of Independent States, or its constituent states for a short time to participate in international measures to help to remove the consequences of catastrophes, epidemics, natural or other calamities on the territory of the Republic of Lithuania, where the grounds, purpose, and nature of such an invitation for help are clear and constitutionally justifiable and where such measures are directed and controlled by the Republic of Lithuania.

Thus, under the Constitution, *inter alia*, the provisions of Articles 135, 136, and 138 thereof, while paying regard to the limitations and prohibitions consolidated in the Constitutional Act on the Non-Alignment of the Republic of Lithuania to Post-Soviet Eastern Unions, the international treaties of the Republic of Lithuania and the laws adopted for the purpose of the implementation of those treaties may provide for various measures for ensuring state independence and security on the international scale (level), *inter alia*, collective and/or other joint international defence, strengthening international peace and security, other international cooperation of military nature where the grounds, purpose, and nature of the said cooperation are clear and constitutionally justifiable.

In this context, it needs to be noted that, under the Constitution, *inter alia*, Article 135 thereof, the legislature, while paying regard to the limitations and prohibitions consolidated in the Constitutional Act on the Non-Alignment of the Republic of Lithuania to Post-Soviet Eastern Unions, may also establish such a legal regulation designed for the implementation of the international treaties of the Republic of Lithuania, *inter alia*, a collective defence treaty ratified by the Seimas, that would provide, *inter alia*, for the short-term participation of strictly limited-size military units of Russia, the Commonwealth of Independent States, or its constituent states in the exercises of the defence treaty Parties and of other states arranged on the territory of the Republic of Lithuania where such exercises are directed and controlled by the Republic of Lithuania jointly (together) with its states-allies, as well as the invitation of such military units in international measures to help to remove the consequences of catastrophes, epidemics, natural or other calamities on the territory of the Republic of Lithuania, where the grounds, purpose, and nature of such an invitation for help are clear and constitutionally justifiable and where such measures are directed and controlled by the Republic of Lithuania.

[...]

... under the Constitution, the legislature, while paying regard to the constitutional norms and principles, *inter alia*, the limitations consolidated in the Constitutional Act on the Non-Alignment of the Republic of Lithuania to Post-Soviet Eastern Unions, which is a constituent part of the Constitution, may provide for such a manner of implementing the rights and obligations of the Republic of Lithuania under a collective defence treaty where the said manner would entail the arrival of military units of the states-allies of the Republic of Lithuania in the Republic of Lithuania and their use for the purposes of a collective defence operation.

[...]

However, the Constitution, *inter alia*, Article 3 of the Constitutional Act on the Non-Alignment of the Republic of Lithuania to Post-Soviet Eastern Unions, prohibits the establishment of such a legal regulation whereby the short-term participation of limited-size army units of Russia, the Commonwealth of Independent States, or its constituent states in international military events taking place on the territory of the Republic of Lithuania is provided for, but no clear and constitutionally justifiable grounds, purposes, and nature of such participation are established.

Paramilitary (statutory) state institutions; the particularities of statutory state service (Article 141 of the Constitution)

The Constitutional Court's ruling of 27 February 2012

... the paramilitary services pointed out in Article 141 of the Constitution may not be identified with the military institutions of national defence, nor may the officials of the paramilitary services be identified with the servicemen of the national defence system, since the constitutional mission of paramilitary services is related not precisely with the defence of the state against aggression and the fulfilment of international defence obligations, but rather with other areas that are important to the security of the state and society (guarding and control of the state border, ensuring public order, the investigation of crimes, the protection of state secrets, etc.); on the other hand, in time of war, while fulfilling their main functions, such paramilitary services may also be commissioned to protect the state as part of the armed forces or to help the army to implement other tasks related to national defence and the international obligations of the state.

Thus, the constitutional mission of such paramilitary services determines the necessity to organise their activities on the basis of statutory relationships.

Consequently, the notion “paramilitary ... services” of Article 141 of the Constitution should be interpreted as including such statutory state institutions that are not categorised as belonging to the national defence system. These institutions are the police, interior service, and security service (i.e. police authorities, the bodies of interior service and security service), which are *expressis verbis* mentioned in Article 141 of the Constitution. The said statutory state institutions also include other state institutions whose activity, with respect to their mission and functions, should be organised on the basis of statutory relationships.

Article 141 of the Constitution implies that the officials of statutory state institutions perform statutory state service, which is a specific type of state service and is different from other (civil) state service and military service. The concept of statutory state service gives rise to the following features specific of this service: a special legal regulation establishing the particularities of the respective service by means of legal acts (statutes); the statutory relationships of strict hierarchical subordination, characterised, *inter alia*, by a specific regime of the performance of service (*inter alia*, the performance of service duties, the period of service, the particularities of official subordination, the system of special service ranks (grades) marking the career of the officials and their place in the hierarchy of statutory relationships, and the specificity of official (disciplinary) liability); special requirements for the officials of statutory state institutions (*inter alia*, those related to their loyalty to the State of Lithuania and their reliability, education, age, the state of health, etc.); specific powers vested in those officials (*inter alia*, with respect to persons not subordinate to them, as well as those related to the use of coercive measures); as well as special social and other guarantees.

It needs to be noted that Article 141 of the Constitution does not give an exhaustive list of paramilitary (statutory) state institutions; therefore, in regulating the relationships of state service, the legislature may also provide not only for police authorities, the bodies of interior service and security service (*inter alia*, customs authorities), but also for other state institutions the activity of which, with respect to their mission and functions, should be organised on the basis of statutory relationships, i.e. for such institutions in which statutory state service would be performed.

It also needs to be noted that statutory state service cannot be the same due to the variety of functions performed by it; therefore, the status of officials of the police, the interior service, the security service, and other state statutory institutions (*inter alia*, customs) must be differentiated and have the particularities established in the respective statutes.

Limitations on activities carried out by the officials of statutory state institutions (Paragraph 1 of Article 33 and Article 141 of the Constitution)

The Constitutional Court's ruling of 27 February 2012

Article 141 of the Constitution establishes special limitations on activities carried out by the officials of state statutory institutions. These limitations are aimed at ensuring the depoliticisation of statutory state institutions: the officials of statutory state institutions may not be members of the Seimas and members of municipal institutions, may not hold elective or appointive office in civil state service (i.e. service that is not categorised as statutory service); nor may they take part in the activities of political parties and organisations (*inter alia*, they may not be members of these parties and organisations or candidates for state or public office proposed or nominated by such parties and organisations). Such limitations express the constitutional principle of civil democratic control over state military and paramilitary institutions. Such limitations, *inter alia*, include special limitations on other work of officials of statutory state institutions – the prohibition on holding a position in civil (non-statutory) state service and in political parties and political organisations.

It needs to be noted that Article 141 of the Constitution does not explicitly establish any other limitations on activities carried out by the officials of state statutory institutions. However, this article, in establishing greater limitations on activities carried out by the officials of statutory state institutions than

limitations that stem from Paragraph 1 of Article 33 of the Constitution on activities carried out by persons holding positions in civil (non-statutory) state service, as well as the mission and nature of statutory state service, implies that the legislature, while regulating the limitations imposed on the officials of state statutory institutions in connection with holding a position other than the one pointed out in Article 141 of the Constitution, not only must establish limitations that stem from Paragraph 1 of Article 33 of the Constitution, but also other limitations on another occupation if the necessity to establish such limitations is implied by the functions of statutory state institutions stemming from the constitutional mission of the respective statutory state institutions and/or the status of the officials of statutory state institutions. In establishing such limitations, the legislature has broad discretion, *inter alia*, to establish additional criteria, which must be taken into consideration while deciding whether another occupation held by the officials of statutory state institutions would be compatible with the functions of the respective statutory state institution and the status of its officials, also to establish an exhaustive list of activities prohibited for the officials of the respective statutory state institution, by indicating in it the areas of economic activity and/or occupation and positions incompatible with the performance of functions by the respective statutory state institution and/or incompatible with the status of its officials.

The particularities of military service

The Constitutional Court's ruling of 4 November 2015

... the Constitution gives rise to the mission of military service, *inter alia*, that of professional military service, to ensure the preparedness to defend the state against a foreign armed attack and to ensure the defence of the state. This mission implies certain specific particularities characteristic of this service, as, for instance: the necessity to constantly maintain combat readiness, as well as the related special regime governing the performance of service (*inter alia*, the particularities related to the period of military service, also to the uninterrupted continuity and mobility of military service; the relationships of strict hierarchical subordination among servicemen; the system of military ranks; the specificity of disciplinary responsibility); the special legal status of servicemen, which includes certain specific powers (related, *inter alia*, to the use of military force), the specific requirements that apply to servicemen performing this service (*inter alia*, requirements related to their loyalty to the State of Lithuania, their age, state of health, education, physical fitness, moral character, etc.), certain limitations and prohibitions, as well as special social and other guarantees; and a special legal regulation established by means of legal acts (statutes) providing for the procedure and conditions applicable to the performance of military service.

Limitations on activities carried out by professional military servicemen (Paragraph 1 of Article 33 and Article 141 of the Constitution)

The Constitutional Court's ruling of 4 November 2015

... in regulating limitations on the activity of professional military servicemen, the constitutional requirements, specified in the Constitutional Court's ruling of 13 December 2004, for the legal regulation governing the right of state servants to have another occupation must be complied with. These limitations stemming from Paragraph 1 of Article 33 of the Constitution must be such that a conflict between public and private interests would be avoided in professional military service, that this service would not be used in pursuit of self-interest, that professional military servicemen would not be precluded from performing their duties, that the authority of professional military service would not be undermined, that no discredit would be brought upon service, and that professional military servicemen would not work in such enterprises, establishments, or organisations in which they have the powers of management or in which they control or supervise the activity of, or adopt any other decisions related to, such enterprises, establishments, or organisations.

[...]

... under Article 141 of the Constitution, persons performing actual military service or alternative service, as well as the officers, non-commissioned officers, re-enlistees of the national defence system who are not retired to the reserve may not be members of the Seimas or members of municipal councils and

may not hold any elective or appointive office in civil state service or participate in the activities of political parties or political organisations.

Thus, Article 141 of the Constitution *expressis verbis* imposes certain special limitations on the activity of servicemen; such limitations aim to ensure the depoliticisation of military state institutions and reflect the constitutional principle of civil democratic control over military state institutions.

[...]

... in implementing its discretion, consolidated in Paragraph 3 of Article 139 of the Constitution, to regulate the organisation of the national defence system, the legislature must establish, by means of laws, such a regulation of the organisation of the national defence system, *inter alia*, the organisation of military service, that would ensure the protection of the constitutional values of utmost importance – the independence, territorial integrity, and constitutional order of the state, as well as the adequate defence of the state against a foreign armed attack; the Constitution gives rise to the duty of the legislature to establish such a legal regulation under which the Republic of Lithuania would have a regular and well-organised army, capable of performing the constitutional functions of national defence; in regulating relationships in connection with the national defence system, *inter alia*, military service, the legislature must take account of the geopolitical situation and other factors that have influence on national security; the legislature must also assess potential threats to national security, as well as long-term political processes, the participation of the state in the organisations of mutual assistance between states, and the international obligations of the state in security missions, peacekeeping missions, etc.

Thus ... it should be held that, under the Constitution, when regulating relationships in connection with the imposition of limitations on the activity of professional military servicemen, the legislature must pay regard to Article 141 of the Constitution, which *expressis verbis* imposes certain special limitations on the activity of servicemen, and to Paragraph 1 of Article 33 thereof, which gives rise to limitations on the work of professional military servicemen other than that specified in Article 141 of the Constitution. The constitutional mission of military service, the particularities of the status of servicemen, a special nature of this service, as well as other important circumstances related to ensuring national defence and national security and related to the fulfilment of international obligations undertaken by the state, also imply the discretion of the legislature to establish other limitations on the activity of professional military servicemen.

[...]

At the same time, it needs to be emphasised that the legislature, in implementing its discretion to establish other limitations [i.e. other than those *expressis verbis* consolidated in Article 141 of the Constitution and arising from Paragraph 1 of Article 33 thereof] on the activity of professional military servicemen, *inter alia*, to impose the prohibition on work under an employment contract or on self-employment, must lay down such a legal regulation governing the work remuneration of professional military servicemen that would ensure the possibility for these servicemen to perform their constitutional obligation fully and with dignity.

In this context, attention should be drawn to the fact that ... work under an employment contract and self-employment constitute activity forms that are similar in terms of both their continuous nature and the aim of persons engaged in these activities to generate income, but differ in their nature: employment relationships are characterised by the subordination of an employee with respect to the employer, whereas self-employment is characterised by independence. Therefore, in implementing its discretion to establish limitations on the activity of professional military servicemen other than the limitations imposed *expressis verbis* under Article 141 of the Constitution and those deriving from Paragraph 1 of Article 33 thereof, the legislature may take into account, among other things, the particularities of the said types of activity.

The constitutional duty of citizens to perform military or alternative national defence service; the requirements for the legal regulation of the relationships connected with the organisation of national defence (Article 139 of the Constitution)

The Constitutional Court's ruling of 4 July 2017

Article 139 of the Constitution prescribes:

“The defence of the State of Lithuania against a foreign armed attack shall be the right and duty of each citizen of the Republic of Lithuania.

The citizens of the Republic of Lithuania must perform military or alternative national defence service according to the procedure established by law.

The organisation of national defence shall be established by law.”

Thus, under this article of the Constitution, each citizen of the Republic of Lithuania has the right and duty to defend the State of Lithuania against a foreign armed attack, as well as the duty to perform military or alternative national defence service according to the procedure established by law. As held in the Constitutional Court’s ruling of 24 September 2009, under the Constitution, only citizens of the Republic of Lithuania have the duty to defend the State of Lithuania against a foreign armed attack (Paragraph 1 of Article 139 of the Constitution) and the duty to perform military or alternative national defence service (Paragraph 2 of Article 139 of the Constitution). It is worth noting that these duties are the only duties of a citizen to the state that are *expressis verbis* consolidated in the Constitution and these duties arise from the citizenship of the Republic of Lithuania as a special legal interrelationship between the state and its citizens.

In its ruling of 24 September 2009, the Constitutional Court held the following:

- ensuring the implementation of the priority duty of state authorities and all citizens to protect such most important constitutional values as the independence, territorial integrity, and constitutional order of the state is a guarantee of the security of the state;

- in order that the citizens who have the constitutional duty to defend the state against a foreign armed attack could properly implement this duty, they must be well-prepared for that; such preparation is ensured, *inter alia*, by military service;

- the constitutional duty of citizens to perform military or alternative national defence service, which is consolidated in Paragraph 2 of Article 139 of the Constitution, is not an objective in itself – it is directly related to the duty, consolidated in Paragraph 1 of Article 139 of the Constitution, to defend the state against a foreign armed attack, as well as, in a certain respect, to the right of citizens, consolidated in Paragraph 2 of Article 3 of the Constitution, to resist anyone who encroaches on the independence, territorial integrity, and constitutional order of the state.

In its rulings of 24 September 2009 and 4 November 2015, when interpreting the provisions of Article 139 of the Constitution, the Constitutional Court also held that the Constitution assigns the legislature to establish the organisation of the national defence system; regulating the relationships in connection with the organisation of national defence, the legislature has rather broad discretion; however, in exercising this discretion, the legislature must pay regard to the norms and principles of the Constitution; laws must establish such a regulation of the organisation of the national defence system, *inter alia*, that of the organisation of military service, that would ensure the protection of the constitutional values of the utmost importance such as the independence, territorial integrity, and constitutional order of the state, as well as the proper defence of the state against a foreign armed attack, *inter alia*, the proper training of citizens for the defence of the state against a foreign armed attack.

In its ruling of 24 September 2009, the Constitutional Court also noted that the notion of the preparedness of citizens to defend the state is rather broad, including not only the preparedness of citizens to defend the state against a foreign armed attack by means of arms; the preparedness to defend the state cannot be understood only as service in order to gain military training; the needs and means of national defence may be very diverse, including not only the expansion of the armed forces and armaments in order to strengthen the military power of the state, but also the informational-technological, industrial, and other means of a similar nature, which are not directly related to armed defence but, in a certain respect, lead to the strengthening of the military power of the state; this diversity also determines the diversity of the specific ways of training citizens for national defence.

It should be noted that, according to Paragraph 2 of Article 139 of the Constitution, alternative national defence service may be assigned instead of military service. The establishment of the constitutional

institution of alternative national defence service is linked, *inter alia*, to the constitutionally guaranteed freedom of thought, religion, and conscience.

[...]

Thus, under Paragraph 2 of Article 139 of the Constitution, interpreted in conjunction with Article 26 thereof, which establishes freedom of thought, religion, and conscience, persons who are not able to perform military service due to their religious or other convictions have the right to perform alternative national defence service instead of military service in accordance with the procedure established by law. In regulating the organisation of national defence, the legislature is obliged to provide for the conditions for implementing this constitutional right of citizens, *inter alia*, the length of alternative national defence service and the procedure for its performance. In doing so, the legislature has broad discretion but must not provide for any such conditions for performing alternative national defence service that would render this service ineffective or inconsistent with its essence; the legislature must also establish such a procedure for assigning citizens to perform alternative national defence service that would allow assessing the requests of citizens to perform this service in terms of their reasonableness; otherwise, the constitutional right and duty of citizens to defend the state against a foreign armed attack and to prepare well for such defence by performing military service could be denied.

In this context, it should be pointed out that, in view of its content, Article 26 of the Constitution is linked to Articles 27 and 28 thereof, under which the convictions, practised religion, or belief of a person may not serve as a justification for a crime or failure to observe laws (Article 27) and, while implementing his/her rights and exercising his/her freedoms, everyone must observe the Constitution and laws and must not restrict the rights and freedoms of other people (Article 28). Among other things, this means that, on the grounds of his/her convictions, practised religion, or belief, no one may refuse to fulfil the constitutionally established duties, *inter alia*, the duty of a citizen to perform military or alternative national defence service, or demand the exemption from these duties.

Interpreting Paragraph 2 of Article 139 of the Constitution in its ruling of 24 September 2009, the Constitutional Court held that a law may establish such conditions for exemption from mandatory military service that are related to objective circumstances due to which the citizens cannot perform this service (age, state of health, etc.).

... under Paragraph 2 of Article 139 of the Constitution, a law may not establish such conditions for exemption from the constitutional duty of citizens to perform military service or alternative national defence service that would be unrelated to objective circumstances due to which the citizens cannot perform this duty; failure to comply with this requirement could deny the said constitutional duty of citizens and, at the same time, no preconditions would be created for the proper fulfilment of the constitutional right and duty of each citizen to defend the state against a foreign armed attack.

It should be noted that, under Paragraph 2 of Article 139 of the Constitution, the legislature may provide for the possibility of deferring the fulfilment of the constitutional duty of citizens to perform military or alternative national defence service in cases where the citizen is temporarily unable to perform this service due to the important reasons specified in the law or in cases where the important interests of the person, family, or society might be injured if such service were not deferred at the given time. Once the reasons for deferring service are no longer applicable, the citizen must perform military or alternative national defence service.

It should also be noted that, in regulating the relationships connected with military or alternative national defence service, *inter alia*, the assignment to perform alternative national defence service instead of military service, exemption from the duty to perform military or alternative national defence service, and deferral of the fulfilment of this constitutional duty, the legislature must observe the requirements stemming from the Constitution, *inter alia*, the constitutional principles of the equality of the rights of persons, proportionality, reasonableness, and justice.

[...]

In the context of the constitutional justice case at issue, it should be noted that the neutrality and secularity of the state also mean that, under the Constitution, the religion professed by a person does not

constitute a basis for exempting the person from the constitutional duties of a citizen to the state, *inter alia*, from the duty to perform military or alternative national defence service, consolidated in Paragraph 2 of Article 139 of the Constitution.

The special guarantees for citizens who have completed military service (Paragraph 3 of Article 139 of the Constitution)

The Constitutional Court's ruling of 6 June 2018

... as held by the Constitutional Court in its ruling of 24 September 2009, in implementing its discretion, consolidated in Paragraph 3 of Article 139 of the Constitution, to regulate the organisation of the national defence system, the legislature must establish, by means of laws, such a regulation of the organisation of the national defence system, *inter alia*, the organisation of military service, that would ensure the protection of such constitutional values of utmost importance as the independence, territorial integrity, and constitutional order of the state, as well as the proper defence of the state against a foreign armed attack. These powers of the legislature, stemming from Paragraph 3 of Article 139 of the Constitution, among other things, imply that, taking into account the constitutional importance of military service and seeking to establish the effective organisation of military service, *inter alia*, to ensure the necessary number of citizens properly trained to defend the state, the legislature may provide for the special guarantees for citizens who have completed military service and, by these guarantees, *inter alia*, encourage the performance of military service and facilitate the social and economic integration of citizens who have completed it.

On the other hand ... in regulating the relationships connected with state service, the legislature must pay regard to the requirement, stemming from Paragraph 1 of Article 33 of the Constitution, to ensure equal competition for persons entering state service, which implies that persons entering state service must be selected on the basis of their knowledge and skills necessary to perform the respective duties of a state servant and that regard must be paid to the imperatives, which stem from Article 29 of the Constitution, in relation to the equality of the rights of persons and non-discrimination and non-granting of privileges on the grounds *expressis verbis* specified in the Constitution or other constitutionally unjustifiable grounds. This means that, when regulating the relationships connected with entering state service, the legislature must take into account, *inter alia*, Paragraph 2 of Article 139 of the Constitution, which provides that a law may lay down the grounds for exemption from the duty to perform the military obligation in relation to objective circumstances, which prevent citizens from performing this obligation (*inter alia*, due to the state of health or age), as well as where citizens are exempt from this obligation on the grounds of gender; in addition, under Paragraph 2 of Article 139 of the Constitution, a law may lay down the grounds for the deferment of mandatory military service and alternative national defence service, or the grounds for early release from such service, where such grounds are related to the state of health of the person or other important personal, family, or social circumstances. In view of this, under the Constitution, compared to citizens who have completed the military or alternative national defence service established by means of a law, less favourable conditions may not be created by means of a law to enter state service for those citizens who are exempt from the military obligation due to objective circumstances on the grounds laid down by means of a law, nor may such less favourable conditions be created for those for whom mandatory military service or alternative national defence service has been deferred or who were released early from the said service due to the state of health or other important personal, family, or social circumstances on the grounds laid down by means of a law.