



**THE CONSTITUTIONAL COURT OF
THE REPUBLIC OF LITHUANIA**

R U L I N G

On the compliance of Paragraph 4 of Article 7 and Article 12 of the Republic of Lithuania's Law "On International Treaties of the Republic of Lithuania" with the Constitution of the Republic of Lithuania

Vilnius, 17 October 1995

The Constitutional Court of the Republic of Lithuania, composed of the Justices of the Constitutional Court: Algirdas Gailiūnas, Kęstutis Lapinskas, Zigmas Levickis, Vladas Pavilionis, Pranas Vytautas Rasimavičius, Stasys Stačiokas, Teodora Staugaitienė, Stasys Šedbaras and Juozas Žilys

The court reporter—Rolanda Stimbirytė

Secretary of the Ministry of Justice Gintaras Švedas, acting as the representative of the Government, the petitioner

The Constitutional Court of the Republic of Lithuania, pursuant to Paragraph 1 of Article 102 of the Constitution of the Republic of Lithuania and Paragraph 1 of Article 1 of the Law on the Constitutional Court of the Republic of Lithuania, in its public hearing, on 3 October 1995, considered case No. 8/95 subsequent to the petition submitted to the Court, on 19 June 1995, by the Government of the Republic of Lithuania the petitioner, requesting to an investigation into whether Paragraph 4 of Article 7 and Article 12 of the Republic of Lithuania's Law "On International Treaties of the Republic of Lithuania" are in compliance with the Constitution of the Republic of Lithuania.

The Constitutional Court

has established:

I

The Government of the Republic of Lithuania, the petitioner, requests the Constitutional Court to investigate whether Paragraph 4 of Article 7 and Article 12 of the Republic of Lithuania's Law "On International Treaties of the Republic of Lithuania" (Official Gazette *Valstybės žinios*, 1991, No. 16-415) are in compliance with the Constitution.

It is pointed out in the request that in accordance with the Law "On International Treaties of the Republic of Lithuania" international treaties may be concluded: after ratifying them by the Government or the Ministry of Foreign Affairs in the procedure established by the Government, after accession to them or ratification of them by the Supreme Council of the Republic of Lithuania. Article 12 of said Law has established that all "international treaties of the Republic of Lithuania (irrespective of the way of conclusion thereof—the petitioner's note) shall have the force of law on the territory of the Republic of Lithuania", while Paragraph 3 of Article 138 of the Constitution states that "international treaties which are ratified by the Seimas of the Republic of Lithuania shall be the constituent part of the legal system of the Republic of Lithuania".

In the opinion of the petitioner, this constitutional provision allows one to affirm that only such international treaties which are ratified by the Seimas acquire the force of law, therefore, a legally justified doubt arises, whether Article 12 of the Law "On International Treaties of the Republic of Lithuania" in its extent of regulation does not contradict Paragraph 3 of Article 138 of the Constitution.

The petitioner also thinks that the legal force of other international treaties of the Republic of Lithuania, which were confirmed or to which the accession was made after the adoption of the Constitution of 1992, has become indeterminate, because in accordance with the 1969 Vienna Convention on the Law of International Treaty, the provisions of which were binding on Lithuania pursuant to the 29 January 1991 declaration "On the Obligations of the Republic of Lithuania Arising out of International Treaties in the Spheres of Diplomatic and Consular Relations", issued by its Supreme Council (Official Gazette *Valstybės žinios*, 1991, No. 4-115), these treaties should have the force of law. Such provision however contradicts Paragraph 3 of Article 138 of the Constitution, and Paragraph 1 of Article 7 of the Constitution provides for that "any law or other statute which contradicts the Constitution shall be invalid".

It is also pointed out in the petition that in Paragraph 4 of Article 7 of the impugned Law it is established that "The Government of the Republic of Lithuania shall submit by its own decision international treaties of the Republic of Lithuania to the Supreme Council of the Republic of

Lithuania for ratification”, and while Item 2 of Article 84 of the Constitution provides for that the President of the Republic “shall sign international treaties of the Republic of Lithuania and submit them to the Seimas for ratification”. Other articles of the Constitution do not directly specify what entities may submit international treaties to the Seimas for ratification, therefore, the petitioner has doubts whether Paragraph 4 of Article 7 of the Law “On International Treaties of the Republic of Lithuania” in accordance with the contents of the norm does not contradict Item 2 of Article 84 of the Constitution.

Conforming to the above-mentioned arguments, the petitioner requests the Constitutional Court to investigate whether:

1) Article 12 of the Law “On International Treaties of the Republic of Lithuania” according to the extent of regulation does not contradict Paragraph 3 of Article 138 of the Constitution;

2) Paragraph 4 of Article 7 of the same Law in accordance with the contents of the norm does not contradict Item 2 of Article 84 of the Constitution.

II

In the course of the preparation of the case for the hearing, the representative of the Government, the petitioner, has pointed out that Paragraph 3 of Article 138 of the Constitution, stating that “international treaties which are ratified by the Seimas of the Republic of Lithuania shall be the constituent part of the legal system of the Republic of Lithuania”, has singled out one way of concluding treaties: the decision of the Seimas to ratify a treaty. In the opinion of the representative of the petitioner, the procedure of ratification of a treaty may be considered as the process of legislation, because the decision of the Seimas, after the adoption of which the norms of international treaties become binding in the Republic of Lithuania, is necessary for ratification. While in the impugned Law, besides ratification, two more ways of conclusion of international treaties are provided: after the confirmation thereof by the Government or the Ministry of Foreign Affairs under the procedure established by the Government and after accession to an international treaty.

During the process of the court hearing, the representative of the petitioner has explained that the Constitution, while consolidating the principle of the separation of powers, singled out the functions and competence of the legislative and executive powers in accordance with which executive power institutions may not approve normative acts which by their legal force equates with acts of the legislature. That means that only international treaties that are ratified by the Seimas may have the force of law, therefore, Article 12 of the impugned Law, according to the extent of regulation, in part contradicts Paragraph 3 of Article 138 of the Constitution.

The representative of the petitioner also doubts whether Paragraph 4 of Article 7 of the

impugned Law, stating that “The Government of the Republic of Lithuania shall submit by its own decision international treaties of the Republic of Lithuania to the Supreme Council of the Republic of Lithuania for ratification” (now to the Seimas), does not contradict Item 2 of Article 84 of the Constitution. The representative of the petitioner bases this doubt on the fact that 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”, while other articles of the Constitution, which determine the competence of the Government, do not directly specify whether it may submit a treaty to the Seimas for ratification.

The representative of the petitioner raises the presumption that Item 2 of Article 84 of the Constitution may be also interpreted so that only the President of the Republic “may submit the treaties signed by himself to the Seimas for ratification”, however, according to the Constitution and the Law on the Constitutional Court, only the Constitutional Court has the right to interpret the Constitution.

Taking into consideration what has been state above and the general principle, according to which the state authority institutions have the right to act only inasmuch as it is allowed by law (the Constitution), the representative of the petitioner believes that Paragraph 4 of Article 7 of the Law “On International Treaties of the Republic of Lithuania” according to its contents contradicts Item 2 of Article 84 of the Constitution.

The Constitutional Court

holds that:

The legal system of the Republic of Lithuania is grounded on the fact that any law or other legal act, as well as international treaties of the Republic of Lithuania, must not contradict the Constitution, because Paragraph 1 of Article 7 of the Constitution prescribes: “Any law or other statute which contradicts the Constitution shall be invalid.” This constitutional provision of itself cannot invalidate a law or an international treaty but it requires that the provisions thereof would not contradict the provisions of the Constitution. Otherwise the Republic of Lithuania would not be able to ensure legal defence of the rights of the parties of international treaties, which arise from those treaties, and this in its turn would hinder from fulfilling obligations according to the concluded international treaties. This would contradict the 1969 Vienna Convention on the Law of International Treaty, which was undertaken to respect and execute by the Republic of Lithuania according to the 29 January 1991 Declaration of the Supreme Council “On the Obligations of the Republic of Lithuania Arising out of International Treaties in the Spheres of Diplomatic and Consular Relations”. At the same time the most important principles of said Convention would be

also violated, namely: *pacta sunt servanda*, i.e., “every treaty is binding to be performed” (Article 26 of the Convention) and “a party may not invoke the provisions of its internal law as justification for its failure to perform a treaty” (Article 27 of the Convention). It is important therefore that consecutive order of concluding, implementing and terminating international treaties would be established and that it would be in conformity with the provisions of the Constitution concerning international treaties as well as principles and norms of this sphere of international law.

In the Republic of Lithuania the procedure of conclusion, implementation and termination of international treaties is regulated by the impugned Law “On International Treaties of the Republic of Lithuania” which was adopted on 21 May 1991, i.e. till the coming into force of the Constitution of the Republic of Lithuania. In this Law the authorisations for conclusion, implementation and termination of international treaties, which has been granted to those state authority institutions that during the adoption of the Law have been functioning according to the system of state authority consolidated in the Provisional Basic Law of the Republic of Lithuania, are established. Pursuant to the Constitution being in force, the said system has been changed in essence by establishing the institution of the President of the Republic as of the Head of State. The impugned Law has not been changed, taking into consideration this new system of state authority, i.e. it has not been coordinated with the Constitution, as it is required in Article 2 of the 6 November 1992 Republic of Lithuania’s Law “On the Procedure for the Enforcement of the Constitution of the Republic of Lithuania”: “Laws, other legal acts, or parts thereof which were in effect on the territory of the Republic of Lithuania prior to the adoption of the Constitution of the Republic of Lithuania, shall be effective provided that they do not contradict the Constitution and this law, and shall remain effective until they are either declared null and void or coordinated with the provisions of the Constitution”.

Upon considering the petition of the Government submitted to the Constitutional Court requesting an investigation into whether the provisions of Articles 7 and 12 of the Law “On International Treaties of the Republic of Lithuania” do not contradict the Constitution, it is necessary to take into account not only the formal comparison of the Constitution and the appropriate text of the articles of the impugned Law, indicated in the petition, but, having in mind that the Constitution is an integral statute (Paragraph 1 of Article 6 of the Constitution), also to that whether the provisions of this Law according to their meaning contradict both the indicated articles of the Constitution and the provisions which consolidate authority of newly established state authority institutions. It is possible to answer this question only after having considered the provisions of the Constitution which consolidate the system of state authority institutions and their competence which has been changed.

I. On the compliance of Article 12 of the Republic of Lithuania’s Law “On

International Treaties of the Republic of Lithuania” with Paragraph 3 of Article 138 of the Constitution of the Republic of Lithuania.

1. Paragraph 3 of Article 138 of the Constitution provides: “International treaties which are ratified by the Seimas of the Republic of Lithuania shall be the constituent part of the legal system of the Republic of Lithuania”, and Article 12 of the Law “On International Treaties of the Republic of Lithuania” stipulates: “International treaties of the Republic of Lithuania shall have the force of law on the territory of the Republic of Lithuania.”

Both Article 138 of the Constitution and Article 12 of the impugned Law allow one to affirm that the system of coordination of international and national law, chosen in the Republic of Lithuania, is based on the rule that international treaties are subject to transforming in the legal system of the country (are being incorporated into it). Such way of implementing international treaties is consolidated both in the Constitution and the impugned Law. It is established in the Constitution that ratified international treaties are constituent part of the internal legal system, and in the impugned Law the force of law is recognised for international treaties. Both these propositions mean that a legal mechanism is being created in the Republic of Lithuania, with the help of which in the national law of the Republic of Lithuania international obligations thereof are being implemented.

The proposition adduced in the Government’s petition that “pursuant to the 1969 Vienna Convention on the Law of International Treaty, to which Lithuania acceded by the 29 January 1991 Declaration of the Supreme Council of the Republic of Lithuania ‘On Obligations of the Republic of Lithuania Arising from Interstate Treaties’, these treaties should have the force of law”, cannot be considered as well-founded. The Constitutional Court specifies that any provision of the 1969 Vienna Convention does not establish that any treaties in the State internal law must have the force of law or any other force. The Vienna Convention establishes only two main principles in the sphere of implementing international treaties, namely: in Article 26—the principle *pacta sunt servanda* and in Article 27—the principle which does not allow any justification of nonfulfillment of a treaty by the norms of the national law.

The principle *pacta sunt servanda* does not mean that different states may not choose different ways and forms of implementation of the norms of international law in their internal legal system. This is the sovereign right of every state. Therefore, in legal systems of states various ways and forms of implementation of the norms of international law in national law are applied. Besides, it is recognised that the validity of the international law in general and concretely of international treaties in the legal system of the state shall always depend on the national law.

2. Having compared the contents of the norms of Paragraph 3 of Article 138 of the

Constitution and those of Article 12 of the impugned Law, the conclusion is to be made that according to the meaning they partly coincide, as both confirm that the treaties ratified by the Seimas shall acquire the force of law. Thus, the provision of Article 12 of the impugned Law “shall have the force of law” does not contradict the provision of Paragraph 3 of Article 138 of the Constitution “shall be the constituent part of the legal system of the Republic of Lithuania”. The Constitutional Court has already construed both these provisions in its Conclusion “On the Compliance of Articles 4, 5, 9, 14 as well as Article 2 of Protocol No. 4 of the Convention for the Protection of Human Rights and Fundamental Freedoms with the Constitution of the Republic of Lithuania” of 24 January 1995 (Official Gazette *Valstybės žinios*, 1995, No. 9-199). It is specified in the Conclusion that “With respect to the Convention, this constitutional provision implies that, upon its ratification and enforcement, 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 laws of the Republic of Lithuania”. This is subject to application not only to the said Convention but to all ratified international treaties of the Republic of Lithuania, therefore, the provision of Article 12 of the impugned Law “shall have the force of law”, when it is applied to the international treaties ratified by the Seimas, does not contradict the Constitution.

3. Having compared the regulated subject in Paragraph 3 of Article 138 of the Constitution and in Article 12 of the impugned Law, it is obviously seen how it differs according to the extent. Only one kind of international treaties is spoken about in Article 138 of the Constitution, i.e. the treaties ratified by the Seimas, while in Article 12 of the impugned Law international treaties are not classified into different kinds. It is stated in said Article 12 that “International treaties of the Republic of Lithuania shall have the force of law on the territory of the Republic of Lithuania”. The Constitutional Court points out that the classification of international treaties into different kinds is an objective phenomenon which has its legal logical and constitutional substantiation. Pursuant to the Constitution only the legislature by the way of ratification may decide which statute of international law shall be the constituent part of the legal system of the Republic of Lithuania having the force of law. The Seimas shall have the right of legislation and the legislation shall not be delegated to any other institution of the State authority. Upon recognising that non-ratified international treaties have the force of law, the prerogative of the Seimas to pass laws would be negated. It is also important that the treaties which must be ratified have the essential significance to the further creation of the legal system. Therefore, the provision of Article 12 of the impugned Law that “international treaties of the Republic of Lithuania”, i.e. also the international treaties which are not ratified by the Seimas, have the force of law, unfoundedly extends their juridical force in the system of sources of law of the Republic of Lithuania. From this standpoint the provision of Article

12 of the impugned Law that international treaties of the Republic of Lithuania “shall have the force of law” contradicts Paragraph 3 of Article 138 of the Constitution.

The Constitutional Court also points out that after the Constitution coming into force, the legal force of the concluded and enforced but non-ratified international treaties of the Republic of Lithuania does not remain indeterminate, as it is stated in the petition of the Government. They have force which is obligatory for entities of legal relations and which is characteristic of every legal act. However, their juridical force differs from ratified treaties in that they must be in compliance not only with the Constitution but also with laws.

4. It should be noted that laws of the Republic of Lithuania single out no individual category of international interdepartmental agreements (treaties), however, in Item 11 of the Government Resolution (No. 5) “On the Procedure of the Implementation of the Law on International Treaties of the Republic of Lithuania” of 7 January 1992 (Official Gazette *Valstybės žinios*, 1992, No. 12-321) and in Item 134 of the Work Regulations of the Government of the Republic of Lithuania (Official Gazette *Valstybės žinios*, 1994, No. 63-1238) international agreements concluded on behalf of ministries or institutions of the Government are mentioned. Practically, in most cases these are agreements of ministries or institutions of the Government concerning cooperation with relevant institutions of foreign States. Such agreements do not create international obligations for the Republic of Lithuania and they therefore are not international treaties in the meaning of Item 1a of Article 2 of the Vienna Convention, according to which “<...> ‘treaty’ means an international agreement concluded between States in written form and governed by international law <...>”. The wording “concluded between States” specifies that an international treaty may be concluded only by the persons which have constant or *ad hoc* authority to represent the State. On this matter Article 8 of the Vienna Convention prescribes: “An act related to the conclusion of a treaty performed by a person who cannot be considered <...> as authorised to represent a State for that purpose is without legal effect unless afterwards confirmed by that State.” Meanwhile, no special authorisation is necessary for said agreements, thus, they have no force of the source of law either from the standpoint of international law or of the law of the Republic of Lithuania.

II. On the compliance of Paragraph 4 of Article 7 of the Law “On International Treaties of the Republic of Lithuania” with Item 2 of Article 84 of the Constitution of the Republic of Lithuania.

1. It is established in Item 2 of Article 84 of the Constitution that the President of the Republic “shall sign international treaties of the Republic of Lithuania and submit them to the Seimas for ratification”. These authorisations of the President of the Republic are ways of execution of his general professional competence consolidated in Item 1 of Article 84 of the Constitution

(“The President of the Republic shall: 1) settle basic foreign policy issues and, together with the Government, implement foreign policy”). That also ensues from the general status of the President of the Republic which is established in Article 77 of the Constitution: he is the Head of State. Paragraph 4 of Article 7 of the impugned Law, in which it is established that “The Government of the Republic of Lithuania shall submit by its own decision international treaties of the Republic of Lithuania to the Supreme Council of the Republic of Lithuania for ratification”, would contradict whole Item 2 of Article 84 of the Constitution, in case the exceptional integral (conjunctive) authorisation of the President of the Republic to sign and submit his signed international treaties to the Seimas for ratification were provided for in this item. The conclusion should be made that this is not one united authorisation but two independent authorisations: 1) to sign international treaties and 2) to submit international treaties signed by the President of the Republic himself and by other authorised officers of State to the Seimas for ratification. Here the essential question is whether only the President of the Republic has such rights, i.e. whether it is prohibited for other State authority institutions to sign international treaties and to submit them to the Seimas for ratification.

2. The fact that the Prime Minister is entitled to sign international treaties can be judged from the constitutional provisions related to the authorisations of the Government in the sphere of foreign policy and international relations. It is established in Item 1 of Article 84 of the Constitution that the President of the Republic “shall settle basic foreign policy issues and, together with the Government, implement foreign policy”. The second provision of this item means that not only the President of the Republic, but the Government as well, has the concrete authorisations to conclude international treaties, as without having them it is impossible to implement foreign policy. It is established in Item 6 of Article 94 of the Constitution that the Government “shall establish diplomatic relations and maintain relations with foreign countries and international organisations”. These 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 that “The Prime Minister shall represent the Government of the Republic of Lithuania”.

Such a procedure of representation while concluding international treaties is generally accepted in international law as well. Item 2 of Article 7 of the Vienna Convention provides:

“In virtue of their functions and without having to produce full powers, the following are considered as representing their State:

a) Heads of State, Heads of Government and Ministers of Foreign Affairs, for the purpose of performing all acts relating to the conclusion of a treaty.”

3. The provision of Item 2 of Article 84 of the Constitution that the President of the

Republic “submit them to the Seimas for ratification” should be evaluated otherwise. It is not pointed out in other articles of the Constitution, which establish the competence of State authority institutions, that the Government or any other state authority entities are entitled to submit international treaties to the Seimas for ratification. This right in accordance with the Constitution as the integral statute is the prerogative of the President of the Republic. Therefore, Paragraph 4 of Article 7 of the impugned Law contradicts the provision of Item 2 of Article 84 of the Constitution that the President of the Republic “submit them to the Seimas for ratification”.

Such an interpretation of the contents of the constitutional provisions and the reciprocity thereof is based on the change of the authorisations of state authority institutions as well as of the contents of interrelations during the process of constitutional reform.

The former system of state authority institutions established in the Provisional Basic Law of the Republic of Lithuania and the authorisations thereof have been changed in essence after coming into force of the Constitution in view of the real implementation of the principle of the separation of powers. However, till now the process of the conclusion of international treaties and especially of the ratification thereof, which would comply with the said provisions of the Constitution, is not concretely regulated by order of legislation. Therefore, while fulfilling the requirements established in Articles 2 and 3 of the 6 November 1992 Republic of Lithuania’s Law “On the Procedure for the Enforcement of the Constitution of the Republic of Lithuania” to coordinate the laws adopted until the enforcement of the Constitution with the provisions of the Constitution, the process of the ratification of international treaties should be clearly determined on the basis of the Constitution and it should be established how the Government and other state authority entities which conclude international treaties of the Republic of Lithuania should participate in said process.

Conforming to Article 102 of the Constitution of the Republic of Lithuania and Articles 53, 54, 55 and 56 of the Law on the Constitutional Court of the Republic of Lithuania, the Constitutional Court of the Republic of Lithuania gives the following

ruling:

To recognise that:

1) the provision of Article 12 of the Republic of Lithuania’s Law “On International Treaties of the Republic of Lithuania” that international treaties of the Republic of Lithuania “shall have the force of law” does not contradict the Constitution of the Republic of Lithuania as much as it is applied to international treaties ratified by the Seimas;

2) the provision of Article 12 of the said Law that international treaties of the Republic of Lithuania “shall have the force of law” according to the extent of the regulated subject contradicts

Paragraph 3 of Article 138 of the Constitution of the Republic of Lithuania as much as it is applied to international treaties which are not ratified by the Seimas;

3) Paragraph 4 of Article 7 of the said Law establishing that “The Government of the Republic of Lithuania shall submit by its own decision international treaties of the Republic of Lithuania to the Supreme Council of the Republic of Lithuania for ratification” contradicts the provision of Item 2 of Article 84 of the Constitution of the Republic of Lithuania that the President of the Republic “submit them to the Seimas for ratification”.

This ruling of the Constitutional Court is final and not subject to appeal.

The ruling is pronounced in the name of the Republic of Lithuania.

Justices of the Constitutional Court:

Algirdas Gailiūnas

Kęstutis Lapinskas

Zigmas Levickis

Vladas Pavilionis

Pranas Vytautas Rasimavičius

Stasys Stačiokas

Teodora Staugaitienė

Stasys Šedbaras

Juozas Žilys