Case No. 17/02-24/02-06/03-22/04

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LITHUANIA

RULING

ON THE COMPLIANCE OF THE PROVISIONS OF THE REPUBLIC OF LITHUANIA'S LAW ON PROTECTED TERRITORIES, THE REPUBLIC OF LITHUANIA'S FORESTRY LAW, THE REPUBLIC OF LITHUANIA'S LAW ON LAND, AND THE REGULATION FOR CONSTRUCTION ON PRIVATE LAND AS APPROVED BY THE RESOLUTION OF THE GOVERNMENT OF THE REPUBLIC OF LITHUANIA (NO. 1608) "ON APPROVING THE REGULATION FOR CONSTRUCTION ON PRIVATE LAND" OF 22 DECEMBER 1995 WITH THE CONSTITUTION OF THE REPUBLIC OF LITHUANIA, ON THE COMPLIANCE OF THE PROVISIONS OF THE REPUBLIC OF LITHUANIA'S LAW ON PROTECTED TERRITORIES AND THE REPUBLIC OF LITHUANIA'S LAW ON LAND REFORM WITH THE PROVISIONS OF THE CONSTITUTIONAL LAW ON THE SUBJECTS, PROCEDURE, TERMS AND CONDITIONS OF, AND LIMITATIONS ON, THE ACQUISITION INTO OWNERSHIP OF LAND PLOTS PROVIDED FOR IN PARAGRAPH 2 OF ARTICLE 47 OF THE CONSTITUTION OF THE REPUBLIC OF LITHUANIA (WORDING OF 20 JUNE 1996) AS WELL AS ON THE COMPLIANCE OF ITEM 2 OF THE REGULATION FOR CONSTRUCTION ON PRIVATE LAND AS APPROVED BY THE RESOLUTION OF THE GOVERNMENT OF THE REPUBLIC OF LITHUANIA (NO. 1608) "ON APPROVING THE REGULATION FOR CONSTRUCTION ON PRIVATE LAND" OF 22 DECEMBER 1995 WITH THE PROVISIONS OF THE REPUBLIC OF LITHUANIA'S FORESTRY LAW AND THE REPUBLIC OF LITHUANIA'S LAW ON LAND

14 March 2006

Vilnius

The Constitutional Court of the Republic of Lithuania, composed of the Justices of the

Constitutional Court: Armanas Abramavičius, Toma Birmontienė, Egidijus Kūris, Kęstutis Lapinskas, Zenonas Namavičius, Ramutė Ruškytė, Vytautas Sinkevičius, Stasys Stačiokas, and Romualdas Kęstutis Urbaitis

The court reporter—Daiva Pitrėnaitė

Antanas Bosas, a member of the Seimas, Paulius Griciūnas, a senior advisor to the Secretariat of the Seimas Audit Committee and Neringa Azguridienė, an advisor to the Legal Department of the Office of the Seimas, acting as the representatives of the Seimas of the Republic of Lithuania, a party concerned

Robertas Klovas, Director of the Legal and Personnel Department of the Ministry of Environment of the Republic of Lithuania, acting as the representative of the Government of the Republic of Lithuania, a party concerned

The Constitutional Court of the Republic of Lithuania, pursuant to Articles 102 and 105 of the Constitution of the Republic of Lithuania and Article 1 and Paragraph 3 of Article 54 of the Law on the Constitutional Court of the Republic of Lithuania, in its public hearing, on 26 January 2006, considered case No. 17/02-24/02-06/03-22/04 subsequent to:

– the petition of the Supreme Administrative Court of Lithuania, a petitioner, requesting an investigation into whether Paragraph 1 (wording of 4 July 1995) of Article 5 of the Republic of Lithuania's Law on Protected Territories, Paragraph 1 (wording of 4 December 2001) of Article 31 of the Republic of Lithuania's Law on Protected Territories, and Paragraph 6 (wording of 11 December 2001) of Article 8 of the Republic of Lithuania's Law on Land Reform are not in conflict with Item 2 of Paragraph 1 of Article 7 of the Constitutional Law on the Subjects, Procedure, Terms and Conditions of, and Limitations on, the Acquisition into Ownership of Land Plots Provided for in Paragraph 2 of Article 47 of the Constitution of the Republic of Lithuania (wording of 20 June 1996) and whether Paragraph 4 (wording of 4 July 1995) of Article 5 of the Republic of Lithuania's Law on Protected Territories and Paragraph 7 (wording of 4 December 2001) of Article 31 the Republic of Lithuania's Law on Protected Territories are not in conflict with Item 6 of Paragraph 1 of Article 7 of the Constitutional Law on the Subjects, Procedure, Terms and Conditions of, and Limitations on, the Acquisition into Ownership of Land Plots Provided for in Paragraph 2 of Article 47 of the Constitution of the Republic of Lithuania (wording of 20 June 1996);

– the petition of the Molėtai District Local Court, a petitioner, requesting an investigation into whether Item 8 of Paragraph 2 of Article 9 and Item 5 of Paragraph 2 of Article 13 of the Republic of Lithuania's Law on Protected Territories are not in conflict with Article 23 and Paragraph 1 of Article 29 of the Constitution of the Republic of Lithuania as well as whether Paragraph 3 of Article 8 of the Republic of Lithuania Forestry Law and Item 2 of the Regulation for Construction on Private Land as approved by the Resolution of the Government of the Republic of

Lithuania (No. 1608) “On Approving the Regulation for Construction on Private Land” of 22 December 1995 are not in conflict Article 23 and Paragraph 1 of Article 29 of the Constitution of the Republic of Lithuania;

– the petition of the Molėtai District Local Court, a petitioner, requesting an investigation into whether Paragraph 9 of Article 31 of the Republic of Lithuania’s Law on Protected Territories is not in conflict with Article 23 and Paragraph 1 of Article 29 of the Constitution of the Republic of Lithuania, whether Paragraph 10 of Article 18 and Paragraph 11 of Article 18 of the Republic of Lithuania’s Law on Land are not in conflict with Article 23 and Paragraph 1 of Article 29 of the Constitution of the Republic of Lithuania and whether Paragraph 3 of Article 4 of the Republic of Lithuania Forestry Law is not in conflict with Article 23 and Paragraph 1 of Article 29 of the Constitution of the Republic of Lithuania;

– the petition of the Švenčionys District Local Court, a petitioner, requesting an investigation into whether Item 8 (wording of 4 December 2001) of Paragraph 2 of Article 9, Item 5 (wording of 4 December 2001) of Paragraph 2 of Article 13, Item 4 (wording of 4 December 2001) of Paragraph 3 and Paragraph 6 (wording of 4 December 2001) of Article 20 of the Republic of Lithuania’s Law on Protected Territories are not in conflict with Article 23 and Paragraph 1 of Article 29 of the Constitution of the Republic of Lithuania as well as whether Item 2 of the Regulation for Construction on Private Land as approved by the Resolution of the Government of the Republic of Lithuania (No. 1608) “On Approving the Regulation for Construction on Private Land” of 22 December 1995 is not in conflict with Article 23 and Paragraph 1 of Article 29 of the Constitution of the Republic of Lithuania.

By the Constitutional Court’s decision of 24 March 2005, the aforesaid petitions were joined into one case and it was given reference No. 17/02-24/02-06/03-22/04.

The Constitutional Court

has established:

I

1. The Supreme Administrative Court of Lithuania, a petitioner, considered an administrative case. By its ruling, the said court suspended the consideration of the case and applied to the Constitutional Court with the petition requesting an investigation into whether Paragraph 1 (wording of 4 July 1995) of Article 5 of the Law on Protected Territories, Paragraph 1 (wording of 4 December 2001) of Article 31 of the Law on Protected Territories, and Paragraph 6 (wording of 11 December 2001) of Article 8 of the Law on Land Reform are not in conflict with Item 2 of Paragraph 1 of Article 7 of the Constitutional Law on the Subjects, Procedure, Terms and Conditions of, and Limitations on, the Acquisition into Ownership of Land Plots Provided for in

Paragraph 2 of Article 47 of the Constitution (wording of 20 June 1996; hereinafter also referred to as the Constitutional Law (wording of 20 June 1996)) and whether Paragraph 4 (wording of 4 July 1995) of Article 5 of the Law on Protected Territories and Paragraph 7 (wording of 4 December 2001) of Article 31 the Law on Protected Territories are not in conflict with Item 6 of Paragraph 1 of Article 7 of the Constitutional Law (wording of 20 June 1996).

2. By its ruling, the Molėtai District Local Court, a petitioner, considered a civil case. The said court suspended the consideration of the case and applied to the Constitutional Court with the petition requesting an investigation into whether Item 8 of Paragraph 2 of Article 9 and Item 5 of Paragraph 2 of Article 13 of the Law on Protected Territories are not in conflict with Article 23 and Paragraph 1 of Article 29 of the Constitution as well as whether Paragraph 3 of Article 8 of the Forestry Law and Item 2 of the Regulation for Construction on Private Land as approved by the Government Resolution (No. 1608) "On Approving the Regulation for Construction on Private Land" of 22 December 1995 (hereinafter also referred to as the Regulation) are not in conflict Article 23 and Paragraph 1 of Article 29 of the Constitution.

3. The Molėtai District Local Court, a petitioner, considered a civil case. By its ruling, the said court suspended the consideration of the case and applied to the Constitutional Court with the petition requesting an investigation into whether Paragraph 9 of Article 31 of the Law on Protected Territories is not in conflict with Article 23 and Paragraph 1 of Article 29 of the Constitution, whether Paragraph 10 of Article 18 and Paragraph 11 of Article 18 of the Law on Land are not in conflict with Article 23 and Paragraph 1 of Article 29 of the Constitution and whether Paragraph 3 of Article 4 of the Forestry Law is not in conflict with Article 23 and Paragraph 1 of Article 29 of the Constitution.

4. By its ruling, the Švenčionys District Local Court, a petitioner, considered a civil case. The said court suspended the consideration of the case and applied to the Constitutional Court with the petition requesting an investigation into whether Item 8 (wording of 4 December 2001) of Paragraph 2 of Article 9, Item 5 (wording of 4 December 2001) of Paragraph 2 of Article 13, Item 4 (wording of 4 December 2001) of Paragraph 3 and Paragraph 6 (wording of 4 December 2001) of Article 20 of the Law on Protected Territories are not in conflict with Article 23 and Paragraph 1 of Article 29 of the Constitution as well as whether Item 2 of the Regulation for Construction on Private Land as approved by the Government Resolution (No. 1608) "On Approving the Regulation for Construction on Private Land" of 22 December 1995 is not in conflict with Article 23 and Paragraph 1 of Article 29 of the Constitution.

II

1. The Supreme Administrative Court of Lithuania, a petitioner, grounds its position on the fact that, in the opinion of the petitioner, under Paragraph 2 of Article 47 of the Constitution and the

Constitutional Law (wording of 20 June 1996), corresponding legal persons enjoy the right to acquire ownership of non-agricultural land lots for construction and exploitation of buildings and facilities, which are necessary for their direct activities; the Constitutional Law (wording of 20 June 1996) provides for the categories of land that the said subjects are not permitted to acquire: they are prohibited from acquiring, *inter alia,* land, which is in protection zones of state parks, protection zones of state reservations, protection zones of sanctuaries, protection zones of biosphere monitoring territories, and land of recreation territories of public purpose; however, the impugned norms of the Law on Protected Territories and the Law on Land Reform limit the right of ownership of persons more than it is done by the Constitutional Law (wording of 20 June 1996), since, under these laws, persons cannot acquire land of other categories as well.

2. The Molėtai District Local Court, a petitioner, grounds its petition (petition No. 29/02) on the fact that the provision of the Forestry Law whereby the right established to the Government or the Ministry of Environment authorised by it to regulate the usage of forest resources in protected territories means that the right of ownership may be limited by means of a substatutory legal act. Besides, in the opinion of the Molėtai District Local Court, the limitations consolidated in the impugned provisions of the Law on Protected Territories, the Forestry Law and the Regulation are applied only when the lot of private land is in state sanctuaries and state parks, thus, the owners of such land lots are treated differently from the land owners who own land lots outside state sanctuaries and state parks.

3. The Molėtai District Local Court, a petitioner, grounds its petition (petition No. 1/03) on the fact that the prohibitions consolidated in the impugned provisions of the Law on Protected Territories, and the Law on Land to partition land lots are applied when the lot of private land is in state sanctuaries and state parks. Thus, in the opinion of the petitioner, corresponding land owners are treated differently from the land owners who own land lots outside state sanctuaries and state parks. In addition, the petitioner is of the opinion that the established prohibitions against the partitioning of the land lot limit the right of the creditor to exact the debt of the debtor, since one cannot aim the exaction at the part of land lot, which belongs to the debtor by common shared property.

4. The Švenčionys District Local Court, a petitioner, grounds its petition on the fact that, in its opinion, due to the prohibitions and limitations on constructing buildings in natural and complex sanctuaries, in state parks, in the protection zones of surface water bodies and in homesteads, which are outside the strand protection area, and, according to the petitioner, due to the limitation consolidated in Item 2 of the Regulation to build certain buildings in forestry land, the rights of ownership are limited more than permitted by the Constitution and various owners are placed in unequal legal situation, if compared with other owners.

III

In the course of the preparation of the case for the Constitutional Court's hearing, written explanations were received from Seimas member A. Bosas, as well as from P. Griciūnas, and N. Azguridienė, who were the representatives of the Seimas, a party concerned, and from R. Klovas, who was the representative of the Government, a party concerned. It is maintained therein that the impugned articles (parts thereof) of the legal acts are no in conflict with the Constitution, since the right of ownership is not absolute, it may be limited by, *inter alia*, protecting forest and other objects of nature as well as the landscape against external harmful impact resulted from the economic and other activity, while the limitations established by the impugned legal regulation are not disproportionate to this constitutionally grounded objective—the public interest.

IV

In the course of the preparation of the case for the judicial consideration, written explanations were received from A. Bosas, Chairperson of the Committee on Environment Protection of the Seimas of the Republic of Lithuania, A., Kundrotas, Minister of Environment of the Republic of Lithuania, V. Markevičius, Minister of Justice of the Republic of Lithuania, G. Švedas, Vice-Minister of Justice of the Republic of Lithuania, J. Kondrotas, Vice-Minister of Agriculture of the Republic of Lithuania, R. Baškytė, Director of the Service for State Protected Territories under the Ministry of Environment of the Republic of Lithuania, D. Kriaučiūnas, Director of the European Law Department under the Ministry of Justice of the Republic of Lithuania, K. Virketis, Director of the Legal Department of the Office of the Seimas of the Republic of Lithuania, V. Baliūnienė, Director of the Legal Department of the Office of the Government of the Republic of Lithuania, I. Pilypienė, Head of the Division of Environment of the Office of the Government of the Republic of Lithuania, A. Daubaras, Chief of the State Environment Protection Inspectorate, G. Gibas, Chief of the Vilnius County, R. Sargūnas, Chief of the Utena County, R. Masilevičius, Director of the Vilnius Regional Environment Protection Department, R. Vygantas, Director of the Utena Regional Environment Protection Department, Prof. Dr. A. Marcijonas, Head of the Department of Constitutional and Administrative Law of the Faculty of Law of Vilnius University, Assoc. Prof. Dr. B. Sudavičius, who works at the same department, Prof. Habil. Dr. V. Paulikas, Dean of the Faculty of Public Administration of Mykolas Romeris University, V. Valeckaitė, Deputy Director of the Institute of Law, A. Gaižutis, Chairperson of the Board of the Lithuanian Association of Forest Owners, and G. Kadžiulis, Director of the Association of Private Forest Owners.

V

1. At the Constitutional Court's hearing, Seimas member A. Bosas, as well as P. Griciūnas

and N. Azguridienė, the representatives of the Seimas, a party concerned, and R. Klovas, the representative of the Government, a party concerned, virtually reiterated the arguments set forth in their written explanations.

2. At the Constitutional Court's hearing, the following specialists took the floor: A. Klimavičius, Head of the Protected Areas Strategy Division of the Nature Protection Department of the Ministry of Environment, V. Vaičiūnas, Director of the Forests Department of the Ministry of Environment, R. Baškytė, Director of the Service for State Protected Territories under the Ministry of Environment, and D. Remeikytė, Head of the Legal Division of the National Land Service under the Ministry of Agriculture.

The Constitutional Court

holds that:

I

1. The Supreme Administrative Court of Lithuania, a petitioner, requests an investigation into whether Paragraph 1 (wording of 4 July 1995) of Article 5 of the Law on Protected Territories, Paragraph 1 (wording of 4 December 2001) of Article 31 of the same law, and Paragraph 6 (wording of 11 December 2001) of Article 8 of the Law on Land Reform were not in conflict with Item 2 of Paragraph 1 of Article 7 of the Constitutional Law (wording of 20 June 1996) and whether Paragraph 4 (wording of 4 July 1995) of Article 5 of the Law on Protected Territories and Paragraph 7 (wording of 4 December 2001) of Article 31 the same law were not in conflict with Item 6 of Paragraph 1 of Article 7 of the Constitutional Law (wording of 20 June 1996).

From the arguments of the petition of the Supreme Administrative Court of Lithuania, a petitioner, it is clear that the petitioner has faced doubts

– whether the provision "The land of reservations, state parks-reservations <…> shall be state property" of Paragraph 1 (wording of 4 July 1995) of Article 5 of the Law on Protected Territories was not in conflict with Item 2 of Paragraph 1 of Article 7 of the Constitutional Law (wording of 20 June 1996);

– whether the provision "The land of reservations <…> shall be exclusive state property" of Paragraph 1 (wording of 4 December 2001) of Article 31 of the Law on Protected Territories was not in conflict with Item 2 of Item 1 of Article 7 of the Constitutional Law (wording of 20 June 1996);

– whether the provision "In the territories of state parks and state sanctuaries, only the lots of the premises, of personal smallholdings or gardeners' societies and the land plots which are between private land lots, which are suitable for agricultural activities and which are not bigger than 5 ha, can be sold to private ownership" of Paragraph 6 (wording of 11 December 2001) of Article 8

of the Law on Land Reform was not in conflict with Item 2 of Paragraph 1 of Article 7 of the Constitutional Law (wording of 20 June 1996).

2. The Molėtai District Local Court, a petitioner, requests an investigation into (petition No. 29/02) whether Item 8 of Paragraph 2 of Article 9 and Item 5 of Paragraph 2 of Article 13 of the Law on Protected Territories, Paragraph 3 of Article 8 of the Forestry Law and Item 2 of the Regulation are not in conflict Article 23 and Paragraph 1 of Article 29 of the Constitution.

From the arguments of the petition (petition No. 29/02) of the Molėtai District Local Court, a petitioner, it is clear that the petitioner has faced doubts

– whether the provision "In natural and complex reservations, it shall be prohibited: <…> (8) to construct structures, which are not related with the reservation establishment objectives, save buildings in the existing and in former homesteads (when there are remnants of former structures and/or gardens, or when the homesteads are marked in the maps of the locality or in other maps, as well as when the legal fact is established), as well as the places established in reservations maintenance plans or projects and in documents of general planning, to construct buildings or increase their size on the slopes whose grade is bigger than 15 degrees, as well as closer than 50 metres from the bottom or top edge of the slope" of Paragraph 2 (wording of 4 December 2001) of Article 9 of the Law on Protected Territories, the provision "In state parks it shall be prohibited: <…> (5) to construct new residential houses, the outhouse and other buildings of the farmer or to increase their size on the slopes whose grade is bigger than 15 degrees, as well as closer than 50 metres from the bottom or top edge of the slope, to construct structures, which decrease the aesthetical value of the landscape, <…>" of Paragraph 2 (wording of 4 December 2001) of Article 13 of the same law are not in conflict with Paragraphs 1 and 2 of Article 23 and Paragraph 1 of Article 23 of the Constitution;

– whether Paragraph 3 (wording of 10 April 2001) of Article 8 of the Forestry Law to the extent that it provides that trips to forests and use of forest resources in protected territories are regulated, *inter alia*, by the regulations of protected territories as approved by the Government or the Ministry of Environment authorised by it is not in conflict with Paragraphs 1 and 2 of Article 23 and Paragraph 1 of Article 29 of the Constitution;

– whether the provision "The construction of buildings in the forestry land is permitted <…>, when such buildings are needed for forestry activities" of Item 2 of the Regulation is not in conflict with Paragraphs 1 and 2 of Article 23 and Paragraph 1 of Article 29 of the Constitution.

3. The Molėtai District Local Court, a petitioner, requests an investigation into (petition No. 1/03) whether Paragraph 9 of Article 31 of the Law on Protected Territories, Paragraph 10 of Article 18 and Paragraph 11 of Article 18 of the Law on Land, and Paragraph 3 of Article 4 of the Forestry Law are not in conflict with Paragraphs 1 and 2 of Article 23 and Paragraph 1 of Article 29

of the Constitution.

From the arguments of the petition (petition No. 1/03) of the Molėtai District Local Court, a petitioner, it is clear that the petitioner has faced doubts whether Paragraph 9 (wording of 4 December 2001) of Article 31 of the Law on Protected Territories, Paragraph 10 (wording of 26 April 1994) of Article 18 and Paragraph 11 (wording of 3 August 2001) of Article 18 of the Law on Land, and Paragraph 3 (wording of 10 April 2001) of Article 4 of the Forestry Law are not in conflict with Paragraphs 1 and 2 of Article 23 and Paragraph 1 of Article 29 of the Constitution.

4. The Švenčionys District Local Court, a petitioner, requests an investigation into whether Item 8 of Paragraph 2 of Article 9, Item 5 of Paragraph 2 of Article 13, Item 4 of Paragraph 3 and Paragraph 6 of Article 20 of the Law on Protected Territories are not in conflict with Article 23 and Paragraph 1 of Article 29 of the Constitution as well as whether Item 2 of the Regulation is not in conflict with Article 23 and Paragraph 1 of Article 29 of the Constitution.

From the arguments of the petition of the Švenčionys District Local Court, a petitioner, it is clear that the petitioner has faced doubts

– whether the provision "In natural and complex reservations, it shall be prohibited: <…> (8) to construct buildings, which are not related with the reservation establishment objectives, save buildings in the existing and in former homesteads (when there are remnants of former structures and/or gardens, or when the homesteads are marked in the maps of the locality or in other maps, as well as when the legal fact is established), as well as the places established in reservations maintenance plans or projects and in documents of general planning, to construct buildings or increase their size on the slopes whose grade is bigger than 15 degrees, as well as closer than 50 metres from the bottom or top edge of the slope" of Paragraph 2 (wording of 4 December 2001) of Article 9 of the Law on Protected Territories, the provision "In state parks it shall be prohibited: <…> (5) to construct new residential houses, the outhouse and other buildings of the farmer or to increase their size on the slopes whose grade is bigger than 15 degrees, as well as closer than 50 metres from the bottom or top edge of the slope, to construct structures, which decrease the aesthetical value of the landscape, <…>" of Paragraph 2 (wording of 4 December 2001) of Article 13 of the same law, the provision "In the protection zones of surface water bodies it shall be prohibited: <…> (4) to change the existing line of building by reconstruction or rebuilding structures in the existing and in former homesteads (when there are remnants of former structures and/or gardens, or when the homesteads are marked in the maps of the locality or in other maps, as well as when the legal fact is established) save the cases established in territorial planning documents" of Paragraph 3 (wording of 4 December 2001) and Paragraph 6 (wording of 4 December 2001) of Article 20 of the same law are not in conflict with Paragraphs 1 and 2 of Article 23 and Paragraph 1 of Article 29 of the Constitution;

– whether the provision “The construction of buildings in the forestry land is permitted <…>, when such buildings are needed for forestry activities” of Item 2 of the Regulation is not in conflict with Article Paragraphs 1 and 2 of 23 and Paragraph 1 of Article 29 of the Constitution.

II

1. In the constitutional justice case at issue, *inter alia,* with the regard to the compliance with Paragraphs 1 and 2 of Article 23 and Paragraph 1 of Article 29 of the Constitution, the legal acts (parts thereof) are impugned which regulate the relations linked with ownership and legal regime of land, forests, water bodies, including those which are in protected territories.

2. The Constitutional Court has held that the Constitution, as supreme law, must be a stable act (the Constitutional Court’s ruling of 16 January 2006). The stability of the Constitution is such its feature which, 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 legal acts of lower legal force. 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. It needs to be mentioned that the Constitution provides for a more difficult and more complex procedure for making amendments to the Constitution, if compared with constitutional and ordinary laws.

3. The principle of a state under the rule of law implies the continuity of the jurisprudence (the Constitutional Court’s rulings of 12 July 2001, 30 May 2003, decision of 13 February 2004 and 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 construed, interrelations of 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 disclosed. While investigating the compliance of legal acts with legal acts of higher legal force, the Constitutional Court develops the concept of provisions of the Constitution set forth in its previous acts and it discloses new aspects of the legal regulation established in the Constitution, which are necessary for the investigation of a corresponding constitutional justice case (the Constitutional Court’s rulings of 30 May 2003, 1 July 2004 and 13 December 2004).

4. The continuity of the constitutional jurisprudence does not mean that the constitutional doctrine cannot be corrected, or that its provisions cannot be reinterpreted.

In the constitutional justice case at issue, it needs to be noted that it is necessary to reinterpret official provisions of the constitutional doctrine (to correct the official constitutional doctrine) is (or might be) necessary, *inter alia,* in the cases when amendments are made to corresponding articles (parts thereof) of the Constitution. After an amendment of the Constitution

comes into force, whereby a certain provision of the Constitution is altered (or abrogated) on the basis of which (i.e. in the course of construction of which) the previous constitutional doctrine was formed (as regards the corresponding issue of the constitutional legal regulation), the Constitutional Court, under the Constitution, enjoys the exceptional powers to hold whether it is possible (and to what extent) to invoke the official constitutional doctrine formulated by the Constitutional Court on the basis of previous provisions of the Constitution, or whether it is no longer possible to invoke it (and to what extent) (the Constitutional Court's rulings of 13 May 2004, 16 January 2006, and 24 January 2006).

In its acts, the Constitutional Court has held many a time 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 entrenched in the Constitution, that it is not permitted to construe any provision of the Constitution in a way so 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 entrenched in the Constitution would thus be disturbed. Taking account of this, it should be held that reinterpretation of the official constitutional doctrinal statements (correction of the official constitutional doctrine) could be necessary also when such amendment to the Constitution is made (a certain provision of the Constitution is amended or abrogated, or a new provision is entrenched in the Constitution) whereby the content of the entire constitutional legal regulation is corrected in essence, even though the constitutional provision in question, on the grounds of which (i.e. in the course of the construction of which) the previous official constitutional doctrine with respect to a certain issue of the constitutional regulation was formulated, is not formally altered. In such cases also it is only the Constitutional Court that enjoys the exceptional powers to hold whether it is possible, in the course of construction of the Constitution, to invoke (and to what extent) the previous official constitutional doctrine (both as a whole and individually each issue of the constitutional legal regulation), or whether it is no longer possible to invoke it (and to what extent).

5. It needs to be noted that the legal acts, the legal regulation established in which is being impugned in this constitutional justice case with regard to its compliance with the Constitution, were passed at the time when Article 47 of the Constitution was set forth in its 20 June 1996 wording. Some of these acts (parts thereof) were valid also at the time of consideration of the constitutional justice case at issue, i.e. at the time when the altered Article 47 of the Constitution was set forth in its wording of 23 January 2003.

6. Thus, in this ruling of the Constitutional Court, the provisions of the official constitutional doctrine are formulated in the way that they had to be formulated at the time when Article 47 of the Constitution was set forth in its wording of 20 June 1996, i.e. which was until the alteration of the

said article of the Constitution and its setting forth in the wording of 23 January 2003; the content of these provisions of the official constitutional doctrine and systemic connections with other provisions are determined by the content of Article 47 (wording of 20 June 1996) of the Constitution.

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 it is possible, in the course of construction of the Constitution, to invoke (and to what extent) the previous official constitutional doctrine (both as a whole and individually each issue of the constitutional legal regulation), or whether it is no longer possible to invoke it (and to what extent), imply that each time when one has to reinterpret certain official constitutional doctrinal provisions (to correct the official constitutional doctrine), the Constitutional Court shall explicitly point it out and properly (clearly and rationally) argues this in a corresponding act of the Constitutional Court.

Thus, in itself, the circumstance that, in this ruling of the Constitutional Court, the official constitutional doctrinal provisions are formulated in the way that they had to be formulated at the time when Article 47 of the Constitution was set forth in its wording of 20 June 1996, does not mean that continuity is not characteristic of the official constitutional doctrine with respect to a corresponding issue of the constitutional legal regulation; quite to the contrary, if this ruling of the Constitutional Court does not explicitly point out the correction (reinterpretation) of these provisions, it should be held that these doctrinal provisions persist, i.e. one must follow them also after Article 47 of the Constitution has been set forth in its wording of 23 January 2003.

7. It has been mentioned that in the constitutional justice case at issue the legal acts (parts thereof) are impugned with regard to their compliance of Paragraphs 1 and 2 of Article 23 and Paragraph 1 of Article 29 of the Constitution.

The provision of Paragraph 1 of Article 23 of the Constitution that property shall be inviolable, the provision of Paragraph 2 of Article 23 thereof that the rights of ownership shall be protected by law, and the provision of Paragraph 1 of Article 29 of the Constitution that all persons shall be equal before the law, the court, and other state institutions and officials should be construed in the context of the legal regulation established in other articles of the Constitution (parts thereof), *inter alia*, Paragraphs 1, 2, and 3 of Article 46, Article 47 (both the one set forth in its wording of 20 June 1996 and the one set forth in its wording of 23 January 2003), Paragraph 3 of Article 53, Article 54, and Paragraph 2 of Article 128, and also by taking account of the principles consolidated in the Constitution, *inter alia*, of the constitutional principle of a state under the rule of law.

8. In its acts the Constitutional Court has held many a time that the inviolability and protection of property are entrenched in Article 23 *(inter alia*, in Paragraphs 1 and 2 thereof) of the

Constitution. Under the Constitution, the owner has the right to perform any actions in regard of his property, save those prohibited by law, as well as to use his property and determine its future in any way, which does not violate the rights and freedoms of other persons. Other persons must not violate these rights of the owner, while the state is under obligation to defend and protect property against unlawful encroachment upon it and from other violations. Laws must protect the rights of ownership of all owners, thus also of the state (as an organisation of all society) and municipalities.

9. Under the Constitution, the right of ownership is not absolute, it can be limited by means of a law due to the character of the object of ownership, due to committed deeds, which are contrary to law, and/or due to the need which is necessary to the society and constitutionally grounded. When one limits the rights of ownership, in all cases the following conditions must be followed: it may be limited only by invoking the law; the limitations must be necessary in a democratic society in order to protect the rights and freedoms of other persons, the values established in the Constitution and the objectives which are necessary to society and which are constitutionally grounded; one must pay heed to the principle of proportionality.

10. Ownership also performs a social function and it includes obligations (the Constitutional Court's rulings of 21 December 2000, 14 March 2002, 19 September 2002, 30 September 2003, and 13 May 2005).

The constitutional imperative of social harmony, constitutional principles of justice, reasonableness and proportionality, as well as other provisions of the Constitution, imply that the inviolability of property and protection of subjective rights of ownership which are entrenched in the Constitution cannot be interpreted as grounds for opposing the right and interests of the owner to the public interest, as well as the rights, freedoms and legitimate interests of other persons (the Constitutional Court's ruling of 13 May 2005).

11. In the constitutional justice case at issue, it should be noted that land, forests, parks, water bodies are special objects of property law, since the proper use and protection of land, forests, parks and water bodies are a condition of the survival and development of the human being and society, and the basis of the welfare of the Nation. Under the Constitution, the natural environment, its fauna and flora, individual objects of nature and districts of particular value are national values of universal importance; their protection and rational use and securing augmentation of natural resources are a public interest, to guarantee which is a constitutional obligation of the state (the Constitutional Court's ruling of 13 May 2005).

Article 54 of the Constitution provides that 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 a sustainable use of natural resources, their restoration and increase (Paragraph 1), that the destruction of land and the underground, the pollution of water and air, radioactive

impact on the environment as well as depletion of wildlife and plants shall be 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.

12. When construing the provisions stemming from the Constitution that ownership includes obligations and that the right of ownership is not absolute, when they are construed together with Article 54 of the Constitution, it should be held that all owners, possessors and users of land lots, forests and water bodies, must pay heed to the constitutional imperative of the protection of natural environment and to protect the natural environment, not to deteriorate its state, and not to inflict harm upon the natural environment.

The state, being under constitutional obligation to act so that the protection of natural environment and of its individual objects, moderate use of natural resources and their restoration and augmentation are guaranteed, may legislatively establish the legal regulation under which the use of individual objects (natural resources) of natural environment be restricted, while certain subjects of the legal relations are obligated to act in a respective manner or to abstain from certain actions (the Constitutional Court's ruling of 13 May 2005).

13. Paragraph 3 of Article 46 of the Constitution provides that the state shall regulate economic activity so that it serves the general welfare of the Nation. One must pay heed to this constitutional imperative also when one regulates, by means of legal acts, the relations linked with the ownership and use of land, forests, water bodies, also those that are in especially valuable places, as well as with other activity in these places.

In this context, it needs to be noted that, as the Constitutional Court held in its ruling of 13 May 2005, by seeking to ensure the protection and rational use, restoration and augmentation of natural environment, wildlife and plants, and of individual objects of nature, the state, while regulating economic activity, can establish specific conditions of economic activity, procedures and means of control, as well as certain limitations or prohibitions on the economic activity related with the use of respective natural resources; the state, when it regulates relations linked with protection of natural environment and its individual objects, the use of natural resources, their restoration and augmentation, also when it limits the use of individual objects of natural environment (natural resources) or when it obligates certain subjects of legal relations to act in a respective manner or to abstain from certain actions, is bound by the imperative of social harmony, the principles of justice, reasonableness and proportionality which are entrenched in the Constitution, *inter alia,* when by such limitations or obligations one interferes with the implementation of constitutional rights and freedoms of the person.

14. When one regulates, by means of legal acts, the relations linked with the ownership and use of land, forests, water bodies, also those that are in especially valuable places, attention must be

paid to the fact that the said objects are very varied ones. This implies differentiated legal regulation of the said relations; the bases of such legal regulation stem from the Constitution itself.

In this context, it needs to be noted that, in Paragraph 1 (wordings of 25 October 1992 and 20 June 1996) of Article 47, land, internal waters, forests and parks were specified *expressis verbis*. Paragraph 3 (wording of 25 October 1992), Paragraph 4 (wording of 20 June 1996) and Paragraph 1 (wording of 23 January 2003), *inter alia,* specified *expressis verbis* the underground, internal waters, forests and parks of state importance. Article 54 of the Constitution also *expressis verbis* specifies areas of particular value.

The fact should also be mentioned that Paragraph 2 (wording of 20 June 1996) of Article 47 of the Constitution *expressis verbis* used to specify non-agricultural land plots. Although in Article 47 (wording of 23 January 2003) of the Constitution there is no longer a provision explicitly mentioning non-agricultural land (or land of any other purpose), the Constitution does not prohibit grouping land and other objects of natural environment according to various criteria, *inter alia,* according to the purpose of their use. This must be done when taking account of characteristics of corresponding natural objects and other factors of natural environment.

When regulating the relations in a differentiated manner, which are linked with the ownership and use of land, forests, parks, water bodies, including those that are in areas of particular value, the legislature may classify land and other objects of natural environment as belonging to certain kinds (categories), establish the legal regime related with such objects, *inter alia*, the conditions, limitations and prohibitions linked with the ownership, use, economic and other activity. The said limitations and prohibitions must be constitutionally grounded.

15. Under the Constitution, land, forests, parks, water bodies, including those that are in areas of particular value, may belong to various subjects—the state, municipalities, legal and natural persons—by right of ownership.

16. 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, internal waters, forests and parks of state importance shall belong by the right of exclusive ownership to the Republic of Lithuania.

This constitutional provision means that the specified objects can belong only to the state by right of ownership, save the exceptions that originate 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 to the ownership of other subjects (save the exceptions permitted by the Constitution) (the Constitutional Court’s ruling of 8 June 2005).

On the other hand, the fact that the Constitution treats certain objects of state importance as belonging by the right of exclusive ownership to the Republic of Lithuania does not mean that

corresponding objects, which belonged by right of ownership to certain person and which later were recognised as those of state importance, must necessarily be taken over for state ownership. In this context, it should be mentioned that, under Paragraph 3 of Article 23 of the Constitution, property may be taken over only for the needs of society according to the procedure established by law and shall be justly compensated for.

17. It needs to be underlined that not every object *(inter alia*, natural object), which belongs by right of ownership to the state, should be treated as one of state importance. In addition, it needs to be noted that one may recognise not any internal waters, forests, and parks as internal waters, forests, and parks of state importance, but only those whose continual value is so big and the necessity to preserve it to the posterity is so pressing that in case they were not deemed to be of state importance, a threat for their preservation would arise.

While taking account of the special continual value of internal waters, forests and parks of state importance and the necessity to preserve them to the posterity, the state is under constitutional obligation to take care of these objects and preserve them.

The recognition that land, forests, parks and water bodies, as well as those that are in areas of special value, are of state importance, implies a special legal regulation of the relations linked with supervision, protection and use of such objects. When taking account of the special continual value of the said objects, the importance and necessity to preserve them to the posterity, special, individual legal regime may be established to such objects, when compared with other objects.

It needs to be noted that under the Constitution the state has a duty also to take care of the natural objects of state importance, which by right of ownership belong not to the state, but other persons, and to ensure their protection. This state duty cannot be interpreted as exempting the owners of corresponding natural objects themselves to contribute to the preservation of the said objects of nature and to observe the legal regime established in regard of these natural objects.

18. The notion “areas of particular value” is employed in Paragraph 1 of Article 54 of the Constitution. In such areas natural and other objects can belong by right of ownership to very varied subjects: the state, municipalities, as well as legal and natural persons. Some of these objects, while in special cases—all the objects which are in a certain area—may be of state importance.

19. Areas of special value may be very varied ones. This can determine the peculiarities of their legal regime, the ways of protection of the objects which are in such areas, as well as the conditions, limitations and prohibitions of the activity in such areas. Such limitations and prohibitions may be applied, *inter alia*, to the economic activity and construction in these areas, as well as to some other activity, due to which the landscape, individual objects which are in corresponding areas can be changed, etc.

It needs to be underlined that the said limitations and prohibitions by which one seeks to

ensure the protection of areas of particular value—the public interest—may and must be established not only in regard of the state and municipalities as the owners of corresponding objects which are in corresponding areas, but also in respect to other owners and users—natural and legal persons—of such objects. Thus, also such limitations and prohibitions may be established whereby one to certain extent interferes with the rights of ownership of all owners, including those of private land plots, forests, parks and water bodies.

One is especially to emphasise that all said limitations and prohibitions must be constitutionally grounded, they must not restrict the rights of the owners and other persons more than it is necessary to achieve the universally important objectives.

20. The duty of the state to take care of protection of natural environment, individual natural objects, of areas of particular value, which is consolidated in the Constitution, if construed in the context of the constitutional provisions establishing the protection of the rights of ownership, coordination of the interests of society and the person, legitimacy and justice, obligates the legislature to provide for legal liability for disregard of the established limitations and restrictions and for violations of the legal regime of natural environment, individual natural objects and especially of areas of particular value.

It should also be emphasised that, in a state under the rule of law, the general principle of law cannot be disregarded whereby one may not enjoy any profit from a violation of law committed by him. Thus, the Constitution does not tolerate a situation, where a violator of law, *inter alia*, a situation where legal acts have not established any duty to the one to whom a sanction was applied (he was punished) for disregard of the established limitations and prohibitions, for violations of the legal regime of natural environment, individual natural objects and of areas of particular value, to restore what had been destroyed, devastated, impoverished, exhausted, polluted or disturbed otherwise. The effect of such violations of law cannot be made lawful (legalised) under any bases nor any circumstances by means of decisions later adopted by certain institutions or officials.

21. A requirement to save state property and not to waste it arises from the provision of Paragraph 2 of Article 128 of the Constitution that the procedure for the possession, use and disposal of State property shall be established by law, the principle of a state under the rule of law which is entrenched in the Constitution, the constitutional principle that ownership includes obligations, Paragraph 2 of Article 23 pf the Constitution whereby the rights of ownership shall be protected by law, and other provisions of the Constitution. State property must be managed rationally.

Having connected the said constitutional principles with the state duty entrenched 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 which are 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 to ownership of other persons only in the case (and only in this manner), when this is constitutionally grounded. It needs to be mentioned that, *inter alia*, the legal regulation whereby land, forests, parks and water bodies which are in areas of particular value and which belong by right of ownership to the state may be transferred to ownership of certain other subjects either *gratis* or for an unreasonably small price, as well as the legal regulation whereby land, forests, parks and water bodies which are in areas of particular value and which belong by right of ownership to the state may be transferred to ownership of other persons when the rights of ownership is being restored to them in equivalent kind, i.e. when one transfers to ownership of the person, who did not have the ownership right to the object that is in areas of particular value—land, forest, park, or water body—precisely such object in kind, would lack such constitutional grounds.

22. The conclusion should be drawn from Paragraph 2 of Article 23 of the Constitution that the rights of ownership shall be protected by law, from Paragraph 2 of Article 128 thereof that the procedure for the possession, use and disposal of state property shall be established by law, from the provision of Article 54 thereof that the state must take care of the protection of the natural environment, wildlife and plants, individual objects of nature and areas of particular value, and from other provisions of the Constitution, that corresponding measures of protection, including all limitations and prohibitions regarding the right of ownership, must be established by means of a law.

23. When regulating the relations linked with the ownership and use of land, forests, parks and water bodies, as well as those which are in areas of particular value, by means of legal acts, one must pay heed to the norms and principles of the Constitution, *inter alia,* the constitutional principle of a state under the rule of law. The said constitutional principle implies the hierarchy of all legal acts and does not permit the substatutory-legal-act regulation of the relations that can be regulated only by law; nor does it permit the fact that substatutory legal acts establish any such legal regulation which would compete with that established in the law or that such legal regulation would not be based upon laws. The said constitutional principle also obligates one to pay heed to of legitimate expectations, to ensure their protection, not to violate the requirements of proportionality, reasonableness and justice. The constitutional principle of a state under the rule of law is inseparable from the principle of equal rights of persons, either, which is entrenched in the Constitution, *inter alia,* in Article 29 thereof.

24. It should also be noted that in cases when certain areas are recognised, under procedure established by law, as of particular value and/or individual objects of nature are recognised as needing protection, a duty may appear for the state to compensate the losses to the owners, which

they experience due to the changed legal regime of corresponding areas and/or objects of nature.

III

1. In the constitutional justice case at issue, the laws (parts thereof) are impugned, *inter alia*, as regards their compliance with the Constitutional Law on the Subjects, Procedure, Terms and Conditions of, and Limitations on, the Acquisition into Ownership of Land Plots Provided for in Paragraph 2 of Article 47 of the Constitution (wording of 20 June 1996).

2. Under the Constitution, constitutional laws are: (1) constitutional law directly specified in the Constitution and adopted under procedure established in Paragraph 3 of Article 69 of the Constitution; (2) constitutional laws entered on the list of constitutional laws and adopted under procedure established in Paragraph 3 of Article 69 of the Constitution.

The fact that certain constitutional laws may be pointed out directly in the Constitution, presupposes the constitutional duty of the Seimas to adopt these laws by paying heed to the requirement established in Paragraph 3 of Article 69 of the Constitution that they 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 (the Constitutional Court's ruling of 24 December 2002).

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 abolished by law. Thus, it is ensured that the social relations regulated by constitutional laws be not regulated in a different manner and that greater stability of the social relations regulated by constitutional laws be guaranteed (the Constitutional Court's rulings of 2 April 2001 and 24 December 2002).

3. By the Law on Supplementing Article 47 of the Constitution of the Republic of Lithuania, which was adopted by the Seimas on 20 June 1996, Article 47 of the Constitution was supplemented with Paragraph 2, which used to provide that municipalities, other national subjects as well as those foreign subjects conducting economic activities in Lithuania which were specified by the constitutional law in accordance with the criteria of European and Transatlantic integration chosen by the Republic of Lithuania might be permitted to acquire the ownership of non-agricultural land plots required for the construction and operation of buildings and facilities necessary for their direct activities; the procedure, conditions and restrictions of the acquisition of the ownership of such a plot had to be established by means of a constitutional law. The said amendment to the Constitution came into force on 21 July 1996.

Thus, under the then constitutional regulation, the Seimas had a duty to pass a constitutional law, regulating the relations specified in Paragraph 2 (wording of 20 June 1996) of Article 47 of the Constitution.

4. When implementing the provisions of Paragraph 2 of Article 47 of the Constitution, on 20

June 1996 the Seimas adopted the Constitutional Law on the Subjects, Procedure, Terms and Conditions of, and Limitations on, the Acquisition into Ownership of Land Plots Provided for in Paragraph 2 of Article 47 of the Constitution.

5. Under the Constitutional Law (wording of 20 June 1996), when it is construed in the context of the then constitutional regulation, the following subjects could acquire non-agricultural land plots as ownership:

– national subjects (municipalities, other legal persons—enterprises, public organisations of citizens and other associations of citizens, non-profit legal persons which were established by such organisations, and which were engaged in actual activity of social assistance or care);

– foreign subjects meeting the criteria of European and Transatlantic Integration embarked on by Lithuania, i.e. the foreign subjects which, judging by the indicators of their origin, are from the European Union member states or States Parties to the Europe Agreement which have established the Association with the European Communities and their member states, or the states which at the moment of the enactment of this Law are members of the Organisation for Economic Co-operation and Development (OECD) or the North Atlantic Treaty Organisation (enterprises set up or acquired by enterprises of foreign origin or foreign nationals and registered by the rights of a legal person in Lithuania, which have here their registered office, central administration or principal place of business, carry out their economic activities here, and in which the rights of effective control belong to the enterprises of foreign origin or to foreign nationals; enterprises of foreign origin, which have set up in Lithuania their subsidiaries or branches without the rights of legal persons for the purpose of their economic activities), save foreign nationals.

Foreign nationals could acquire non-agricultural land plots as ownership not later than after the expiry of the transitional period provided for by the Europe Agreement establishing the Association of the European Communities and their member states and the Republic of Lithuania.

6. Under Article 7 of the Constitutional Law (wording of 20 June 1996), the said subjects were not permitted to acquire as ownership: land under the objects belonging to the Republic of Lithuania by the right of exclusive ownership (Item 1 of Paragraph 1); land of national parks, national reservations, reserves, protective area of the territory of biosphere monitoring (Item 2 of Paragraph 1); agricultural land (Item 3 of Paragraph 1); forestry land, with the exception of plots necessary for operation of buildings and facilities designated for economic activities which have been provided for in the approved planning documents (Item 4 of Paragraph 1); land of recreational forests and forest shelter belts, rivers and other water bodies exceeding 1 hectare in size as well as their protective bank area (Item 5 of Paragraph 1); land of resorts and communal recreational territories, individual communal public recreational areas and objects (Item 6 of Paragraph 1); land of state-protected natural carcass, monuments of nature, history, archaeology and culture as well as

the surrounding protective areas (Item 7 of Paragraph 1); land of territories reserved, according to design projects, for communal roads and engineering service lines, objects of infrastructure of communal use in towns or other localities, and for other common needs of the community (Item 8 of Paragraph 1); land under public roads, railway lines, airports, sea and river ports, main pipe-lines and other engineering service lines of communal use as well as land necessary for their operation (Item 9 of Paragraph 1); land allotted, in accordance with the procedure established by law, under the free trade (economic) zones territory (Item 10 of Paragraph 1); land of protected territories where deposits of mineral resources and other natural resources have been found, with the exception of land plots which, according to planning documents, have been directly allotted for the construction of buildings and facilities required for the mining or use of said mineral resources (Item 11 of Paragraph 1); land of the Curonian Spit, the 15-km wide strip of coastal land of the Baltic Sea and the Curonian Lagoon, with the exception of towns that are not resorts (Item 12 of Paragraph 1); land assigned to the frontier (Item 13 of Paragraph 1); land of the territories assigned or reserved for the needs of the national defence as well as territories where land acquisition restrictions are established by law or government resolutions for safety reasons (Item 14 of Paragraph 1).

7. The Constitutional Law (wording of 20 June 1996) had to come into force on the next day after the entry into force of the Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Lithuania, of the other part (Article 18 of the Constitutional Law (wording of 20 June 1996)). The said agreement came into force on 1 February 1998. Thus, the Constitutional Law (wording of 20 June 1996) came into force on 2 February 1998.

8. Paragraph 2 of Article 18 of the Constitutional Law (wording of 20 June 1996) used to provide: “From the day on which the Republic of Lithuania becomes a full and equal member of the European Union and until the adoption of the law replacing this constitutional law only those provisions of this Law shall be in force which will not contradict the agreement of Lithuania’s membership in the European Union.”

Thus, the Constitutional Law (wording of 20 June 1996) was conceived as a provisional constitutional law: it was prescribed that after the Republic of Lithuania had become a member of the European Union, not all articles (parts thereof) of the Constitutional Law (wording of 20 June 1996) would be in force, but only those which would not contradict the agreement of Lithuania’s membership in the European Union; it was also prescribed that one would adopt another constitutional law (in the Constitutional Law (wording of 20 June 1996) referred to as “the law replacing this constitutional law”), which would replace this one; the aforesaid constitutional law could also be adopted either before the Republic of Lithuania became a member of the European

Union or (as provided for in the Constitutional Law (wording of 20 June 1996) itself) after the Republic of Lithuania had become a member of the European Union.

In this context, it needs to be mentioned that the formula "until the adoption of the law replacing this constitutional law" of Paragraph 2 of Article 18 of the Constitutional Law (wording of 20 June 1996) is not a correct one, because (1) the application of an adopted law or constitutional law cannot be related only with the adoption of this law or constitutional law—a law or a constitutional law may be applied not earlier than from the day of its entry into force; (2) a constitutional law may not be replaced by an ordinary law: under the Constitution it may be replaced only by means of a constitutional law.

9. Paragraph 2 of Article 18 of the Constitutional Law (wording of 20 June 1996) mentioned the agreement of Lithuania's membership in the European Union, i.e. an international treaty of the Republic of Lithuania.

9.1. In this context, it needs to be noted that, under Paragraph 3 of Article 138 of the Constitution, 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.

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

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

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

This doctrinal provision cannot be construed as meaning that, purportedly, the Republic of Lithuania may disregard its international treaties, if a different legal regulation is established in its laws or constitutional laws than that established by international treaties. Quite to the contrary, the principle entrenched in the Constitution that the Republic of Lithuania observes international obligations undertaken of its own free will and respects universally recognised principles of

international law implies that in cases when national legal acts *(inter alia,* laws or constitutional laws) establish a legal regulation which competes with that established in an international treaty, then the international treaty should be applied.

9.3. On 16 September 2003, the Seimas ratified the Treaty Between the Kingdom of Belgium, the Kingdom of Denmark, the Federal Republic of Germany, the Hellenic Republic, the Kingdom of Spain, the French Republic, Ireland, the Italian Republic the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Republic of Austria, the Portuguese Republic, the Republic of Finland, the Kingdom of Sweden, the United Kingdom of Great Britain and Northern Ireland (Member States of the European Union) and the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia, the Slovak Republic Concerning the Accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia, the Slovak Republic to the European Union. Under the said treaty 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 whereof it 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. Thereby the membership of the Republic of Lithuania in the European Union was constitutionally confirmed (the Constitutional Court's ruling of 13 December 2004).

9.4. Under Paragraph 2 of the Constitutional Act "On Membership of the Republic of Lithuania in the European Union", the norms of the European Union law shall be 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 the European Union law shall be applied directly, while in the event of collision of legal norms, they shall 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 when national legal acts establish the legal regulation which competes with that established in an international treaty, then the international treaty should be applied, but also, in regard of European Union law, establishes *expressis verbis* the collision rule, which consolidates the priority of application of

European Union legal acts in the cases where the provisions of the European Union arising out of the founding Treaties of the European Union compete with the legal regulation established in Lithuanian national legal acts (regardless of what their legal force is), save the Constitution itself.

10. On 23 January 2003, the Seimas adopted the a Law on Alteration of Article 47 of the Constitution of the Republic of Lithuania, by Article 1 whereof Article 47 (wording of 20 June 1996) of the Constitution was amended.

Article 47 (wording of 23 June 2003) of the Constitution provides:

"The underground, internal waters, forests, parks, roads, historical, archaeological and cultural objects of State importance shall belong by the right of exclusive ownership to the Republic of Lithuania.

The Republic of Lithuania shall have exclusive rights to the airspace over its territory, its continental shelf and the economic zone in the Baltic Sea.

In the Republic of Lithuania foreign subjects may acquire ownership of land, internal waters and forests according to a constitutional law.

Plots of land may belong to a foreign state by right of ownership for the establishment of its diplomatic missions and consular posts according to the procedure and conditions established by law."

This amendment of the Constitution came into force on 24 February 2003.

Thus, under the Constitution, an obligation occurred to the Seimas to pass a constitutional law, regulating the relations specified in Paragraph 3 (wording of 23 January 2003) of Article 47 of the Constitution.

11. On 20 March 2003, the Seimas adopted the Law on Amending the Constitutional Law on the Subjects, Procedure, Terms and Conditions of, and Limitations on, the Acquisition into Ownership of Land Plots Provided for in Paragraph 2 of Article 47 of the Constitution of the Republic of Lithuania, by Article 1 whereof the Constitutional Law (wording of 20 June 1996) was amended and set forth in a new wording. The title of this constitutional law was amended as well—it was titled the Constitutional Law on Implementing Paragraph 3 of Article 47 of the Constitution of the Republic of Lithuania (hereinafter also referred to as the Constitutional Law (wording of 20 March 2003)).

12. Thus, the Constitutional Law (wording of 20 June 1996) was replaced by a legal act of the Seimas, which was named not as "a constitutional law", but "a law".

It has been mentioned that, under the Constitution, constitutional laws may be replaced only by constitutional laws, and that they may not be replaced by ordinary laws.

Alongside, it needs to be noted that the intentions of the legislature, which were recorded in the *travaux préparatoires,* as well as the procedure of alteration of this Constitutional Law

documented in the shorthand records of the Seimas sittings, confirms the fact that the said legal act of the Seimas was treated, at the time when it was being drafted, considered and adopted, as the one which had to replace the Constitutional Law (wording of 20 June 1996), and as the one which had to be adopted in observance of the procedure established in Paragraph 3 of Article 69 of the Constitution, thus, as a constitutional law. More than 90 members of the Seimas voted in favour of this law, thus, more than 3/5 of all members of the Seimas (as required in Paragraph 3 of Article 69 of the Constitution).

13. The Law on Amending the Constitutional Law on the Subjects, Procedure, Terms and Conditions of, and Limitations on, the Acquisition into Ownership of Land Plots Provided for in Paragraph 2 of Article 47 of the Constitution came into force (save the exception provided for therein) on 9 April 2003.

14. Taking account of the fact that Article 47 of the Constitution was changed so that Paragraph 3 thereof (wording of 23 January 2003) to great extent regulates other relations than those that used to be regulated by Paragraph 2 of this article (wording of 20 June 1996), of the fact that on 9 April 2003 the Law on Amending the Constitutional Law on the Subjects, Procedure, Terms and Conditions of, and Limitations on, the Acquisition into Ownership of Land Plots Provided for in Paragraph 2 of Article 47 of the Constitution came into force, as well as of the fact that under Paragraph 2 of Article 18 of the Constitutional Law (wording of 20 June 1996) the said law had to be in force "until the adoption of the law replacing this constitutional law", it should be held that on 9 April 2003 the Constitutional Law on the Subjects, Procedure, Terms and Conditions of, and Limitations on, the Acquisition into Ownership of Land Plots Provided for in Paragraph 2 of Article 47 of the Constitution (wording of 20 June 1996) became no longer valid.

15. If one compares the Constitutional Law in its wording of 20 March 2003 with the Constitutional Law in its wording of 20 June 1996, it becomes clear that these laws were adopted on different constitutional grounds and, to great extent, they regulate different relations, and as regards the same relations regulated by the Constitutional Law in its wording of 20 March 2003 and by the Constitutional Law in its wording of 20 June 1996, then these relations to great extent are regulated in a different manner.

Therefore, in this constitutional justice case, the legal regulation established in the Constitutional Law (wording of 20 March 2003) will not be investigated; nor will the Constitutional Court investigate whether the legal acts (parts thereof) impugned in this case are not in conflict with the Constitutional Law (wording of 20 March 2003).

16. The fact that in this constitutional justice case the legal regulation established in the Constitutional Law (wording of 20 March 2003) will not be investigated and that one will not investigate whether the legal acts (parts thereof) impugned in this case are not in conflict with the

Constitutional Law (wording of 20 March 2003) does not mean that the legislature does not have a duty to correct the above-discussed legal incorrectness—to correct the title of the Law on Amending the Constitutional Law on the Subjects, Procedure, Terms and Conditions of, and Limitations on, the Acquisition into Ownership of Land Plots Provided for in Paragraph 2 of Article 47 of the Constitution, i.e. to indicate that this legal act is a constitutional law. This should be done in observance of the procedure established in Paragraph 3 of Article 69 of the Constitution.

IV

On the compliance of the provision "The land of reservations, state parks-reservations <…> shall be state property" of Paragraph 1 (wording of 4 July 1995) of Article 5 of the Law on Protected Territories and the provision "The land of reservations <…> shall be exclusive state property" of Paragraph 1 (wording of 4 December 2001) of Article 31 of the Law on Protected Territories with Item 2 of Paragraph 1 of Article 7 of the Constitutional Law on the Subjects, Procedure, Terms and Conditions of, and Limitations on, the Acquisition into Ownership of Land Plots Provided for in Paragraph 2 of Article 47 of the Constitution (wording of 20 June 1996).

1. On 9 November 1993, the Seimas adopted the Law on Protected Territories (Official Gazette *Valstybės žinios,* 1993, No. 63-1188) in Paragraph 1 of Article 5 whereof it was established: "The land of reservations, state park-reservations, and Curonian Spit National Park shall be exclusive state property. In other protected territories there may be both state and private land ownership."

The Law on Protected Territories (save the exception established in the law) came into force on 24 November 1993.

2. The Law on Protected Territories was amended and supplemented by the Republic of Lithuania's Law "On Amending and Supplementing the Republic of Lithuania's Law on Protected Territories" (Official Gazette *Valstybės žinios,* 1995, No. 60-1502), which was adopted by the Seimas on 4 July 1995, by Article 2 whereof Article 5 of the Law on Protected Territories (wording of 9 November 1993) was supplemented, however, the impugned provision of Paragraph 1 of this article remained unchanged.

The Law on Protected Territories (wording of 9 November 1993 with subsequent amendments and supplements) was also amended and supplemented by the Republic of Lithuania's Law on Amending Article 4 and Supplementing Article 14 of the Law on Protected Territories, which was adopted by the Seimas on 27 July 2000, however, the impugned provision of Paragraph 1 (wording of 4 July 1995) of Paragraph 5 of the Law on Protected Territories was not changed.

3. By Article 1 of the Republic of Lithuania's Law on Amending the Law on Protected Territories (Official Gazette *Valstybės žinios,* 2001, No. 108-3902), which was adopted by the

Seimas on 4 December 2001, the Law on Protected Territories (wording of 9 November 1993 with subsequent amendments and supplements) was amended and set forth in a new wording. The Law on Protected Territories of the new wording came into force on 28 December 2001.

Paragraph 1 of Article 31 of the Law on Protected Territories (wording of 4 December 2001) provides: "The land of reservations and Curonian Spit National Park shall be exclusive state property. In other protected territories there shall be state and/or private land ownership."

4. The Law on Protected Territories (its wording of 9 November 1993 with subsequent amendments and supplements, and its wording of 4 December 2001) establishes the purposes of establishment of protected territories, defines the system of protected territories, entrenches categories and types of protected categories, establishes the regimes of protection and use of the entire system of protected territories and of its constituent parts, the procedure of establishment, accounting, protection and possession of protected territories, the rights and duties of protected territories' land owners, users and possessors, liability for violations of this law etc.

5. The Law on Protected Territories (wording of 9 November 1993 with subsequent amendments and supplements) consolidated the following system of protected territories: preserving (conservation) territories (to which reservations, sanctuaries and protected objects of the landscape are assigned); protecting (preservation) territories (to which protection zones are assigned); territories restoring natural resources (recuperating territories) (to which protected lots of natural resources are assigned); protected territories of complex purpose (integration territories), in which preserving, protecting, recreational and economic zones are joined (to which state parks (national and regional parks) and biosphere monitoring territories (to which biosphere reservations and biosphere grounds are assigned) are assigned). The Law on Protected Territories (wording of 4 December 2001) virtually consolidates the same system of protected territories, however, some of the names of its constituent parts are specified: instead of preserving (conservation) territories, which are mentioned in the Law on Protected Territories (wording of 9 November 1993 with subsequent amendments and supplements) conservation territories of protection priority are indicated, instead of protecting (preservation) territories—ecologic territories of protection priority, instead of territories restoring natural resources (recuperating territories)—restoration territories of protection priority, instead of protected territories of complex purpose (integration territories)—complex protected territories (one of the types of complex protected territories, i.e. biosphere monitoring territories, was named as biosphere observation (monitoring) territories in the Law on Protected Territories (wording of 4 December 2001)).

6. In the context of the constitutional justice case at issue, the fact is of importance as to what legal regime of reservations, sanctuaries, state parks, biosphere monitoring territories and protected zones is entrenched in the Law on Protected Territories.

6.1. Under the Law on Protected Territories (wording of 9 November 1993 with subsequent amendments and supplements), the purpose of reservations is to preserve typical or unique complexes of the landscape and to preserve their biota gene pool, to arrange permanent scientific research and observation, to propagate values concerning nature and culture. Reservation land is state property. The Law on Protected Territories (wording of 4 December 2001) consolidates that reservations are established in order to preserve and research areas of particular value and that reservation land is exceptional state property. In reservations only the activity *expressis verbis* specified in the Law on Protected Territories is allowed; other activity is prohibited.

6.2. The purpose of sanctuaries is to preserve complexes of natural and cultural heritage or individual elements thereof, as well as species of plants and wildlife, to ensure the diversity of the landscape of Lithuania and its ecological balance, to be objects of scientific research, and to be objects of educational recreation (the Law on Protected Territories (wording of 9 November 1993 with subsequent amendments and supplements)). The Law on Protected Territories provides that sanctuaries are established in order to preserve valuable natural and/or cultural areas. In the territories of sanctuaries there may be both state and private land, however, land of state sanctuaries is not subject to sale. In addition, selling in portions, renting, mortgaging a land lot situated in state sanctuaries and held by right of ownership, or giving it as a present (save the exception provided for in the law) is not permitted. In the territories of sanctuaries commercial-economic, construction, recreational and other activities, which can harm the protected complexes and objects, are prohibited or limited.

6.3. The purpose of state parks (national and regional parks) is to preserve the complexes and objects of the landscape, which are valuable from the standpoint of culture, to maintain the stability of natural ecosystems, to restore disturbed natural and cultural complexes and objects, to develop scientific research in the areas of protection of natural and cultural heritage as well as in other areas, to propagate and promote the traditional way of life of regions of Lithuania, to create conditions for recreation, first of all, tourism, to promote ecologically reliable economic activity (the Law on Protected Territories (wording of 9 November 1993 with subsequent amendments and supplements)). The Law on Protected Territories (wording of 4 December 2001) provides that state parks are established in areas of particular value. In the territories of state parks there may be both state and private land ownership (save the reservations which are in state parks, the land of which is state property), however, the land of sanctuaries and recreational zones of state parks is not subject to privatisation (save the exceptions provided for in the law). In addition, selling in portions, renting, mortgaging a land lot situated in state sanctuaries and held by right of ownership, or giving it as a present (save the exception provided for in the law) is not permitted. The economic activity in state parks is limited by taking account of the legal regime existing in a concrete zone of the state

park.

6.4. The purpose of biosphere monitoring territories is to create a representative system of ecology monitoring, to observe, control, predict changes in natural systems, carry out experiments and research of biosphere use, develop ecological education and propaganda, and to guarantee the protection of natural complexes. In the biosphere monitoring territories there may be both state and private land ownership (save the reservations which are in the biosphere monitoring territories, the land of which is state property). The economic activity in biosphere monitoring territories is limited by taking account of the legal regime existing in a concrete zone of the biosphere monitoring territory (the Law on Protected Territories (its wording of 9 November 1993 with subsequent amendments and supplements, and its wording of 4 December 2001)).

6.5. Under the Law on Protected Territories (wording of 9 November 1993 with subsequent amendments and supplements), the purpose of the protection zones was to isolate the protected objects and territories from the negative impact of the human being, to preserve traditional peculiarities of the locality, the visual environment of the protected objects and complexes, to diminish the negative impact made by economic objects and complexes on the human being and nature and to guarantee a normal functioning of these objects as well as to ensure general ecologic stability of the landscape. The Law on Protected Territories (wording of 4 December 2001) names these zones as ecologic protection zones—territories in which limitations on activities are established in order to protect neighbouring territories or objects, as well as the environment, from a possible negative impact of the activities. In these territories there may be both state and private land ownership. Economic activity is also subject to limitation in the protection zones.

7. As mentioned before, under Item 2 of Paragraph 1 of Article 7 of the Constitutional Law on the Subjects, Procedure, Terms and Conditions of, and Limitations on, the Acquisition into Ownership of Land Plots Provided for in Paragraph 2 of Article 47 of the Constitution (wording of 20 June 1996), the national and foreign subjects specified in this constitutional law could not acquire land in state parks, state reservations, sanctuaries, and protection zones of biosphere monitoring as private ownership.

8. It needs to be noted that it is impossible to construe the prohibition on acquiring land in state parks, state reservations, sanctuaries, and protection zones of biosphere monitoring as private ownership established in Item 2 of Paragraph 1 of Article 7 of the Constitutional Law (wording of 20 June 1996), as well as other prohibitions established in this constitutional law in a way whereby, purportedly, laws cannot establish any prohibitions on acquiring different land, which is in protected territories, as ownership.

9. The provision “The land of reservations, state parks-reservations <…> shall be state property” of Paragraph 1 (wording of 4 July 1995) of Article 5 of the Law on Protected Territories

(if construed, *inter alia*, in the context of another provision of the same paragraph, i.e. the provision "In other protected territories there may be both state and private land ownership") means that this land may not be transferred to ownership of other subjects. By the said prohibition, it was sought to ensure the protection and endurance of reservations and state parks-reservations as areas of particular value.

Thus, the provision "The land of reservations, state parks-reservations <…> shall be state property" of Paragraph 1 (wording of 4 July 1995) of Article 5 of the Law on Protected Territories was constitutionally grounded.

10. Taking account of the arguments set forth, the conclusion should be drawn that the provision "The land of reservations, state parks-reservations <…> shall be state property" of Paragraph 1 (wording of 4 July 1995) of Article 5 of the Law on Protected Territories was not in conflict with Item 2 of Paragraph 1 of Article 7 of the Constitutional Law (wording of 20 June 1996).

11. Having held that the provision "The land of reservations, state parks-reservations <…> shall be state property" of Paragraph 1 (wording of 4 July 1995) of Article 5 of the Law on Protected Territories was not in conflict with Item 2 of Paragraph 1 of Article 7 of the Constitutional Law (wording of 20 June 1996), on the basis of analogous arguments, it should also be held that the provision "The land of reservations <…> shall be exclusive state property" of Paragraph 1 (wording of 4 December 2001) of Article 31 of the Law on Protected Territories was not in conflict with Item 2 of Paragraph 1 of Article 7 of the Constitutional Law (wording of 20 June 1996).

V

On the compliance of the provision "In the territories of state parks and state sanctuaries, only the lots of the premises, of personal smallholdings or gardeners' societies and the land plots which are between private land lots, which are suitable for agricultural activities and which are not bigger than 5 ha, can be sold to private ownership" of Paragraph 6 (wording of 11 December 2001) of Article 8 of the Law on Land Reform with Item 2 of Paragraph 1 of Article 7 of the Constitutional Law on the Subjects, Procedure, Terms and Conditions of, and Limitations on, the Acquisition into Ownership of Land Plots Provided for in Paragraph 2 of Article 47 of the Constitution (wording of 20 June 1996).

1. On 25 July 1991, the Seimas adopted the Law on Land Reform, which came into force on 31 August 1991.

The Law on Land Reform (wording of 25 July 1991) has been amended and/or supplemented more than once.

By Article 1 of the Republic of Lithuania's Law on Amending the Law on Land Reform,

which was adopted by the Seimas on 2 July 1997, the Law on Land Reform (wording of 25 July 1991) was amended and set forth in a new wording. The Law on Land Reform of the new wording came into force on 23 July 1997.

The Law on Land Reform (wording of 2 July 1997) has been amended and supplemented more than once.

By Article 1 of the Republic of Lithuania's Law on Amending and Supplementing Articles 8 and 10 of the Law on Land Reform (Official Gazette *Valstybės žinios,* 2001, No. 108-3905), which was adopted by the Seimas on 11 December 2001, Article 8 of the Law on Land Reform (wording of 2 July 1997 with subsequent amendments and supplements) was supplemented with following Paragraph 6:

"In the territories of state parks and state sanctuaries, only the lots of the premises, of personal smallholdings or gardeners' societies and the land plots which are between private land lots, which are suitable for agricultural activities and which are not bigger than 5 ha, can be sold to private ownership. The said land plots may be sold to the owners of adjacent land lots while not observing the succession specified in this article."

The Law on Amending and Supplementing Articles 8 and 10 of the Law on Land Reform came into force on 28 December 2001.

Later the Law on Land Reform (wording of 2 July 1997 with subsequent amendments and supplements) has been amended and supplemented more than once, however, the impugned provision of Paragraph 6 (wording of 11 December 2001) of Article 8 of this law has not been amended.

2. As mentioned before, under Item 2 of Paragraph 1 of Article 7 of the Constitutional Law on the Subjects, Procedure, Terms and Conditions of, and Limitations on, the Acquisition into Ownership of Land Plots Provided for in Paragraph 2 of Article 47 of the Constitution (wording of 20 June 1996), the national and foreign subjects specified in this constitutional law could not acquire land in state parks, state reservations, sanctuaries, and protection zones of biosphere monitoring as private ownership.

It has been held in this ruling of the Constitutional Court that it is impossible to construe the prohibition on acquiring land in state parks, state reservations, sanctuaries, and protection zones of biosphere monitoring as private ownership established in Item 2 of Paragraph 1 of Article 7 of the Constitutional Law (wording of 20 June 1996), as well as other prohibitions established in this constitutional law in a way whereby, purportedly, laws cannot establish any prohibitions on acquiring different land, which is in protected territories, as ownership.

3. The impugned provision of Paragraph 6 (wording of 11 December 2001) of Article 8 of the Law on Land Reform means that the land specified in this paragraph may not be transferred to

ownership of other subjects, save the indicated exceptions.

By the said prohibition, it was sought to ensure the protection and endurance of state parks and state sanctuaries as areas of particular value.

It also needs to be noted that the legislature which, under Paragraph 2 of Article 128 of the Constitution, enjoys the powers to establish the procedure for the possession, use and disposal of state property, also enjoyed the powers to stipulate that in the territories of state parks and state sanctuaries, only the lots of the premises, of personal smallholdings or gardeners' societies and the land plots which were between private land lots, which were suitable for agricultural activities and which were not bigger than 5 ha, could be sold to private ownership.

Thus, the provision "In the territories of state parks and state sanctuaries, only the lots of the premises, of personal smallholdings or gardeners' societies and the land plots which are between private land lots, which are suitable for agricultural activities and which are not bigger than 5 ha, can be sold to private ownership" of Paragraph 6 (wording of 11 December 2001) of Article 8 of the Law on Land Reform is constitutionally grounded.

4. Taking account of the arguments set forth, the conclusion should be drawn that the provision "In the territories of state parks and state sanctuaries, only the lots of the premises, of personal smallholdings or gardeners' societies and the land plots which are between private land lots, which are suitable for agricultural activities and which are not bigger than 5 ha, can be sold to private ownership" of Paragraph 6 (wording of 11 December 2001) of Article 8 of the Law on Land Reform was not in conflict with Item 2 of Paragraph 1 of Article 7 of the Constitutional Law (wording of 20 June 1996).

VI

On the compliance of Paragraph 4 (wording of 4 July 1995) of Article 5 and Paragraph 7 (wording of 4 December 2001) of Article 31 of the Law on Protected Territories with Item 6 of Paragraph 1 of Article 7 of the Constitutional Law on the Subjects, Procedure, Terms and Conditions of, and Limitations on, the Acquisition into Ownership of Land Plots Provided for in Paragraph 2 of Article 47 of the Constitution (wording of 20 June 1996).

1. Paragraph 4 (wording of 4 July 1995) of Article 5 of the Law on Protected Territories used to provide: "The land of state sanctuaries, state parks-sanctuaries and of recreation zones, as well as non-agricultural landed property (forests, shrubbery, waters, swamps, sands, unused land) shall not be subject to privatisation, save the land which is subject to being returned, the lots of the premises, of personal smallholdings or gardeners' societies, or up to 5 ha plot of forest, shrubbery, water lots, which are between agricultural landed property and which are between private land lots."

The impugned provision had not been changed until the Seimas adopted the Republic of Lithuania's Law on Amending the Law on Protected Territories on 4 December 2001, by Article 1

whereof the Law on Protected Territories (wording of 9 November 1993 with subsequent amendments and supplements) was amended and set forth in a new wording.

2. Paragraph 7 (wording of 4 December 2001) of Article 31 of the Law on Protected Territories provides: "The state land in state sanctuaries, state parks and sanctuaries of biosphere observation (monitoring), as well as the state land in recreation zones, forests, waters, shrubbery, swamps, places abounding in stones and other unused land is not subject to sale, save the lots of the premises, of personal smallholdings or gardeners' societies and the land lots which are between private land lots, which are suitable for agricultural activities and which are not bigger than 5 ha."

3. As mentioned before, under Item 6 of Paragraph 1 of Article 7 of the Constitutional Law (wording of 20 June 1996), the national and foreign subjects specified in this constitutional law could not acquire land of resorts and communal recreational territories, individual communal public recreational areas and objects as ownership.

4. It needs to be noted that it is impossible to construe the prohibition established in Item 6 of Paragraph 1 of Article 7 of the Constitutional Law (wording of 20 June 1996) to acquire land of resorts and communal recreational territories, individual communal public recreational areas and objects as ownership, as well as other prohibitions established in this constitutional law, in a way that, purportedly, laws cannot establish any prohibitions on acquiring different land, which is in protected territories, as ownership.

5. The provision of Paragraph 4 (wording of 4 July 1995) of Article 5 of the Law on Protected Territories means that the land specified in this paragraph cannot be transferred to private ownership of other subjects, save the specified exceptions.

By the said prohibition, it was sought to ensure the protection and endurance of state sanctuaries and state parks-sanctuaries and recreation zones as areas of particular value.

It also needs to be noted that the legislature which, under Paragraph 2 of Article 128 of the Constitution enjoys the powers to establish the procedure for the possession, use and disposal of state property, also enjoyed the powers to stipulate that the land of state sanctuaries, state parks-sanctuaries and of recreation zones, as well as non-agricultural landed property (forests, shrubbery, waters, swamps, sands, unused land) shall not be subject to privatisation, save the land which is subject to being returned, the lots of the premises, of personal smallholdings or gardeners' societies, or up to 5 ha plot of forest, shrubbery, water lots, which are between agricultural landed property and which are between private land lots.

Thus, the legal regulation established in Paragraph 4 (wording of 4 July 1995) of Article 5 of the Law on Protected Territories was constitutionally grounded.

6. Taking account of the arguments set forth, the conclusion should be drawn that Paragraph 4 (wording of 4 July 1995) of Article 5 of the Law on Protected Territories was not in conflict with

Item 6 of Paragraph 1 of Article 7 of the Constitutional Law (wording of 20 June 1996).

7. Having held that Paragraph 4 (wording of 4 July 1995) of Article 5 of the Law on Protected Territories was not in conflict with Item 6 of Paragraph 1 of Article 7 of the Constitutional Law (wording of 20 June 1996), on the grounds of analogous arguments, it should also be held that Paragraph 7 (wording of 4 December 2001) of Article 31 of the Law on Protected Territories was not conflict with Item 6 of Paragraph 1 of Article 7 of the Constitutional Law (wording of 20 June 1996), either.

VII

On the compliance of Paragraph 11 (wording of 3 August 2001) of Article 18 of the Law on Land and Paragraph 9 (wording of 4 December 2001) of Article 31 of the Law on Protected Territories with Paragraphs 1 and 2 of Article 23 and Paragraph 1 of Article 29 of the Constitution.

1. On 26 April 1994, the Seimas adopted the Law on Land (Official Gazette *Valstybės žinios,* 1994, No. 34-620), which came into force on 1 July 1994.

The Law on Land (wording of 26 April 1994), *inter alia*, its Article 18, has been amended and/or supplemented more than once. By Article 1 of the Republic of Lithuania's Law on Supplementing Article 18 of the Law on Land (Official Gazette *Valstybės žinios,* 2001, No. 71-2519), which was adopted by the Seimas on 3 August 2001, Article 18 (wording of 4 May 2000) of the Law on Land was supplemented with the following Paragraph 11: "It shall not be permitted to partition, to sell in parts, to lease, mortgage, give as a present a lot held by right of ownership in state sanctuaries and state parks, save the cases where boundaries of adjacent premises of owners are changed."

The Law on Supplementing Article 18 of the Law on Land came into force on 17 August 2001.

2. By Article 1 of the Republic of Lithuania's Law on Amending the Law on Land, which was adopted by the Seimas on 27 January 2004, the Law on Land (wording of 26 April 1994 with subsequent amendments and supplements) was amended and set forth in a new wording. The Law on Land of the new wording came into force on 21 February 2004. It no longer contained the provision of Paragraph 11 (wording of 3 August 2001) of Article 18 of the Law on Land.

3. The impugned Paragraph 11 (wording of 3 August 2001) of Article 18 of the Law on Land used to consolidate the prohibition on partitioning the land lots belonging to persons by right of private ownership, which were in state sanctuaries and state parks.

It needs to be noted that the fact that in Paragraph 11 (wording of 3 August 2001) of Article 18 of the Law on Land certain transactions were listed, the conclusion of which was prohibited, does not mean that one permitted any other transactions concerning the land lots belonging to

persons by right of private ownership, which were in state sanctuaries and state parks, which would be related to partition of these lots.

Alongside, it needs to be noted that the impugned paragraph (wording of 3 August 2001) of Article 18 of the Law on Land also contained an exception to the absolute prohibition consolidated therein: conclusion of transactions concerning a part of land lots, which belonged to persons by right of private ownership, which was in state sanctuaries and state parks, and partition of a land lot was permitted for its owner, in case the boundaries of adjacent premises were being changed.

4. It has been held in this ruling of the Constitutional Court that the state, when being under the constitutional obligation to act so that the protection of the natural environment and individual objects of nature as well as areas of particular value, and the rational use, restoration and augmentation of natural resources are ensured, may also establish, by means of laws, the legal regulation whereby also such limitations and prohibitions would be established to the owners of corresponding objects, which are in areas of particular value, whereby to a certain extent one interferes with the rights of ownership of the owners of private land lots. Such limitations and prohibitions must be proportionate to the constitutionally grounded objective sought.

5. By the prohibition established in Paragraph 11 (wording of 3 August 2001) of Article 18 of the Law on Land, it was sought to ensure that too many small land lots belonging to different owners would not come into existence in state sanctuaries and state parks, since this fact, especially when one takes account of the servitudes which one must necessarily establish in such cases, etc., could create pre-conditions for changing the natural landscape and individual objects existing in corresponding localities, as well as for impoverishing, exhausting or disturbing the natural environment otherwise.

6. While deciding whether Paragraph 11 (wording of 3 August 2001) of Article 18 of the Law on Land was not in conflict with the Constitution, it also need to be noted that by the legal regulation established in the said paragraph no persons were treated differently from others. The prohibition established in the same paragraph was applied to all persons who were in the same legal situation—land lots, which were in state sanctuaries and state parks, i.e. the territories whose legal regime is essentially different from the legal regime of other territories, belonged to them by right of private ownership.

7. It also needs to be noted that Paragraph 11 (wording of 3 August 2001) of Article 18 of the Law on Land did not contain any provisions prohibiting the owners of corresponding land lots to conclude transactions concerning the entire land lot that belonged to them and which was in state sanctuaries and state parks.

8. Thus, there are not enough legal arguments which would permit asserting that the prohibition established in Paragraph 11 (wording of 3 August 2001) of Article 18 of the Law on

Land was constitutionally groundless.

9. Taking account of the arguments set forth, the conclusion should be drawn that Paragraph 11 (wording of 3 August 2001) of Article 18 of the Law on Land was not in conflict with Paragraphs 1 and 2 of Article 23 and Paragraph 1 of Article 29 of the Constitution.

10. Paragraph 9 (wording of 4 December 2001) of Article 31 of the Law on Protected Territories provides: "It shall not be permitted that a land lot held by right of private ownership in state sanctuaries and state parks be divided in parts when it is sold, leased, apportioned, mortgaged, and given as a present, save the cases where boundaries of adjacent premises are changed."

11. The legal regulation established in Paragraph 9 (wording of 4 December 2001) of Article 31 of the Law on Protected Territories is virtually identical to that established in Paragraph 11 (wording of 3 August 2001) of Article 18 of the Law on Land.

12. Having held that Paragraph 11 (wording of 3 August 2001) of Article 18 of the Law on Land was not in conflict with Paragraphs 1 and 2 of Article 23 and Paragraph 1 of Article 29 of the Constitution, on the grounds of analogous arguments, it should also be held that Paragraph 9 (wording of 4 December 2001) of Article 31 of the Law on Protected Territories is not in conflict with Paragraphs 1 and 2 of Article 23 and Paragraph 1 of Article 29 of the Constitution, either.

13. Alongside, it needs to be noted that after Paragraph 11 (wording of 3 August 2001) of Article 18 of the Law on Land and Paragraph 9 (wording of 4 December 2001) of Article 31 of the Law on Protected Territories had established an absolute prohibition on partitioning the land lots which belonged to persons by right of private ownership, which were in state sanctuaries and state parks, and on concluding corresponding transactions (save the established exception), one disregarded the fact that state sanctuaries and state parks, as well as lots, which are in state sanctuaries and state parks, are of different sizes, that land and other objects of nature, which are in state sanctuaries and state parks, may be of different value and, correspondingly, different legal regimes may be established in their regard. By such legal regulation, preconditions were also created for such situations where it is impossible to partition the lots which belong to persons by right of private ownership, which are in state sanctuaries and state parks, even though these lots are very big, thus, the prohibitions on partitioning land lots may be disproportionate. Such legal regulation is not without faults and it should be corrected.

VIII

On the compliance of Paragraph 10 (wording of 26 April 1994) of Article 18 of the Law on Land with Paragraphs 1 and 2 of Article 23 and Paragraph 1 of Article 29 of the Constitution.

1. Paragraph 10 (wording of 26 April 1994) of Article 18 of the Law on Land used to provide: "A private land lot may be partitioned into two or more lots, which are provided for

residential, public and economic-commercial construction only if this construction is established in territorial planning documents and if the established size of the lot and the density and character of the construction are observed.”

2. By Article 1 of the Law on Amending the Law on Land, which was adopted by the Seimas on 27 January 2004, the Law on Land (wording of 26 April 1994 with subsequent amendments and supplements) was changed and set forth in a new wording. It no longer contained the provision of Paragraph 10 (wording of 26 April 1994) of Article 18 of the Law on Land.

3. Paragraph 10 (wording of 26 April 1994) of Article 18 of the Law on Land established the conditions under which a private land lot is permitted to be partitioned into two or more such lots, which are provided for residential, public and economic-commercial construction: (1) such construction must be established in territorial planning documents; (2) the established size of the lot must be observed; and (3) the density and character of the construction must be observed.

Thus, if one failed to observe at least one of these conditions, it was not permitted to partition a private land lot into two or more lots provided for residential, public and economic-commercial construction.

It needs to be noted that the provisions of laws and other legal acts designed for territorial planning documents, sizes of lots and the establishment of the density and character of construction in these lots are not a matter of investigation in this constitutional justice case at issue.

4. While deciding whether Paragraph 10 (wording of 26 April 1994) of Article 18 of the Law on Land was not in conflict with Paragraphs 1 and 2 of Article 23 and Paragraph 1 of Article 29 of the Constitution, it needs to be noted that neither Article 23 of the Constitution, nor Article 29 thereof, nor in other part of the Constitution contains provisions, which would permit asserting that land could be used for residential, public and economic-commercial construction without any technical requirements, those of security of buildings and their rational arrangement, and without territorial urban planning.

By such legal regulation the rights of ownership of owners of corresponding land lots are not disproportionately restricted, nor is the constitutional principle of equal rights of persons violated. Therefore, there are not any legal arguments to assert that the provision of Paragraph 10 (wording of 26 April 1994) of Article 18 of the Law on Land requiring that land lots be not partitioned in the absence of territorial planning documents and without observing the established size of the lot as well as the density and character of construction was in conflict with Articles 23 and 29 or any other articles or principles of the Constitution.

5. Taking account of the arguments set forth, the conclusion should be drawn that Paragraph 10 (wording of 26 April 1994) of Article 18 of the Law on Land was not in conflict with Paragraphs 1 and 2 of Article 23 and Paragraph 1 of Article 29 of the Constitution.

IX

On the compliance of Paragraph 3 (wording of 10 April 2001) of Article 4 of the Forestry Law with Paragraphs 1 and 2 of Article 23 and Paragraph 1 of Article 29 of the Constitution.

1. On 22 November 1994, the Seimas adopted the Forestry Law (Official Gazette *Valstybės žinios,* 1994, No. 96-1872), which came into force on 1 January 1995.

The Forestry Law (wording of 22 November 1994) has been amended and/or supplemented more than once.

By Article 1 of the Republic of Lithuania's Law on Amending the Forestry Law (Official Gazette *Valstybės žinios,* 2001, No. 35-1161), which was adopted by the Seimas on 10 April 2001, the Forestry Law (wording of 22 November 1994 with subsequent amendments and supplements) was amended and set forth in a new wording. The Forestry Law of the new wording came into force on 1 July 2001.

2. Paragraph 3 (wording of 10 April 2001) of Article 4 of the Forestry Law provides: "Private forest estates shall not be divided in parts if the estate is or becomes smaller than 5 hectares."

3. It has been mentioned that forests are special objects of property law, that one may legislatively establish a special, exceptional legal regime in regard of forests if compared with other objects. In its ruling of 1 June 1998, the Constitutional Court held that a special ecologic, social and economic significance of the forest to the environment determines certain limitations and restrictions of the right of ownership of the owners of the forest. Such limitations and restrictions must be proportionate to the constitutionally grounded objective.

4. By the prohibition established in Paragraph 3 (wording of 10 April 2001) of Article 4 of the Forestry Law, if the estate is or becomes smaller than 5 hectares, it is sought to ensure that too many small forest lots that belong to different owners would not come in to existence in forests, since, in this way, especially when one takes account of the servitudes which one must necessarily establish in such cases, of technical requirements of forest management and arrangement of forestry activities *(inter alia,* the separation of forest estates), preconditions might be created to change the natural landscape and individual objects existing in the forest, as well as to impoverish and exhaust the forest and the natural environment.

5. In the context of the constitutional justice case at issue, it needs to be noted that the legislature, when seeking to ensure the protection of forests and not to diminish their value, can establish minimum sizes of forest estates.

6. It should be held that there are not enough legal arguments which would permit asserting that the size of the forest estate established in Paragraph 3 (wording of 10 April 2001) of Article 4

of the Forestry Law is groundless and that its different size should be established.

7. While deciding whether Paragraph 3 (wording of 10 April 2001) of Article 4 of the Forestry Law is not in conflict with the Constitution, it also needs to note that, under the legal regulation established in the said paragraph, no persons are treated differently than other ones. The prohibition consolidated in this paragraph is applied to all persons who are in the same legal situation, i.e. forest lots, whose legal regime is essentially different from the legal regimes of other territories, belong to all of them by right of private ownership.

8. Taking account of the arguments set forth, the conclusion should be drawn that Paragraph 3 (wording of 10 April 2001) of Article 4 of the Forestry Law is not in conflict with Paragraphs 1 and 2 of Article 23 and Paragraph 1 of Article 29 of the Constitution.

X

On the compliance of Paragraph 3 (wording of 10 April 2001) of Article 8 of the Forestry Law to the extent that it provides that trips to forests and use of forest resources in protected territories are regulated, *inter alia,* by the regulations of protected territories as approved by the Government or the Ministry of Environment authorised by it with Paragraphs 1 and 2 of Article 23 and Paragraph 1 of Article 29 of the Constitution.

1. Paragraph 3 (wording of 10 April 2001) of Article 8 of the Forestry Law provides: "Trips to forests and use of forest resources in protected territories shall be regulated by the Law on Protected Territories and the regulations of protected territories as approved by the Government or the Ministry of Environment authorised by it."

2. Under Paragraph 3 (wording of 10 April 2001) of Article 8 of the Forestry Law, the Seimas has a duty to regulate trips to forests and use of forest resources in protected territories by means of the Law on Protected Territories. This does not mean that all relations linked with trips to forests and use of forest resources in protected territories must be regulated only by the Law on Protected Territories. Such relations may be regulated, *inter alia,* by substatutory acts, which are passed by corresponding state institutions (officials) according to their competence.

3. Under Paragraph 3 (wording of 10 April 2001) of Article 8 of the Forestry Law, the regulations of protected territories which regulate trips to forests and use of forest resources in protected territories may be approved either by the Government or the Ministry of Environment authorised by it.

Taking account of Paragraph 1 of Article 98 of the Constitution, under which a Minister shall head his respective ministry, shall resolve issues belonging to the competence of the ministry, and shall also discharge other functions provided for by law, it should be held that the regulations of protected territories mentioned in Paragraph 3 (wording of 10 April 2001) of Article 8 of the Forestry Law are approved, upon authorisation of the Government, by the Minister of Environment.

4. It is impossible to construe Paragraph 3 (wording of 10 April 2001) of Article 8 of the Forestry Law, which provides that trips to forests and use of forest resources in protected territories are regulated, *inter alia*, by the regulations of protected territories as approved by the Government or the Ministry of Environment authorised by it, as one granting the right to the Government or the Ministry of Environment to establish, by means of the regulations of protected territories, such legal regulation which would compete with the legal regulation established in the law, or which would not be grounded on the law.

It needs to be underlined that Paragraph 3 (wording of 10 April 2001) of Article 8 of the Forestry Law does not contain any provisions which would limit and restrict the rights of ownership of anyone, and which would treat any persons as enjoying not equal rights.

5. Taking account of the arguments set forth, the conclusion should be drawn that Paragraph 3 (wording of 10 April 2001) of Article 8 of the Forestry Law to the extent that it provides that trips to forests and use of forest resources in protected territories are regulated, *inter alia*, by the regulations of protected territories as approved by the Government or the Ministry of Environment authorised by it is not in conflict with Paragraphs 1 and 2 of Article 23 and Paragraph 1 of Article 29 of the Constitution.

XI

On the compliance of the provision "In natural and complex reservations, it shall be prohibited: <…> (8) to construct buildings, which are not related with the reservation establishment objectives, save buildings in the existing and in former homesteads (when there are remnants of former structures and/or gardens, or when the homesteads are marked in the maps of the locality or in other maps, as well as when the legal fact is established), as well as the places established in reservations maintenance plans or projects and in documents of general planning, to construct buildings or increase their size on the slopes whose grade is bigger than 15 degrees, as well as closer than 50 metres from the bottom or top edge of the slope" of Paragraph 2 (wording of 4 December 2001) of Article 9 of the Law on Protected Territories, the provision "In state parks it shall be prohibited: <…> (5) to construct new residential houses, the outhouse and other buildings of the farmer or to increase their size on the slopes whose grade is bigger than 15 degrees, as well as closer than 50 metres from the bottom or top edge of the slope, to construct structures, which decrease the aesthetical value of the landscape, <…>" of Paragraph 2 (wording of 4 December 2001) of Article 13 of the same law, the provision "In the protection zones of surface water bodies it shall be prohibited: <…> (4) to change the existing line of building by reconstruction or rebuilding structures in the existing and in former homesteads (when there are remnants of former structures and/or gardens, or when the homesteads are marked in the maps of the locality or in other maps, as

well as when the legal fact is established) save the cases established in territorial planning documents" of Paragraph 3 (wording of 4 December 2001) and Paragraph 6 of Article 20 of the same law with Paragraphs 1 and 2 of Article 23 and Paragraph 1 of Article 29 of the Constitution.

1. Under Item 8 (wording of 4 December 2001) of Paragraph 2 of Article 9 of the Law on Protected Territories, in natural and complex reservations, it shall be prohibited "to construct buildings, which are not related with the reservation establishment objectives, save buildings in the existing and in former homesteads (when there are remnants of former structures and/or gardens, or when the homesteads are marked in the maps of the locality or in other maps, as well as when the legal fact is established), as well as the places established in reservations maintenance plans or projects and in documents of general planning, to construct buildings or increase their size on the slopes whose grade is bigger than 15 degrees, as well as closer than 50 metres from the bottom or top edge of the slope".

Under Item 5 (wording of 4 December 2001) of Paragraph 2 of Article 13 of the Law on Protected Territories, in state parks the activity which can harm the protected complexes and objects (valuable objects) as well as resources or recreation shall be subject to limitation or shall be prohibited. In state parks it shall be prohibited "to construct new residential houses, the outhouse and other buildings of the farmer or to increase their size on the slopes whose grade is bigger than 15 degrees, as well as closer than 50 metres from the bottom or top edge of the slope, to construct structures, which decrease the aesthetical value of the landscape, and to plant plants blocking the panoramas which are of historical, cultural and aesthetical value".

Under Item 4 (wording of 4 December 2001) of Paragraph 3 of Article 20 of the Law on Protected Territories, in the protection zones of surface water bodies it shall be prohibited "to change the existing line of building by reconstruction or rebuilding structures in the existing and in former homesteads (when there are remnants of former structures and/or gardens, or when the homesteads are marked in the maps of the locality or in other maps, as well as when the legal fact is established) save the cases established in territorial planning documents".

Paragraph 6 (wording of 4 December 2001) of Article 20 of the Law on Protected Territories provides: "The construction of only one bathhouse of personal use without a cellar, which is not bigger than 25 sq. m in general area together with appurtenances and whose height is not bigger than 4 m (the height shall be calculated from the average land surface area of the homestead upon which the construction is built) shall be permitted in each of the existing homesteads beyond the coastal protection strip and only in the places provided for in territorial planning documents. The sizes of other constructions shall be established in protection regulations."

2. The provision "In natural and complex reservations, it shall be prohibited: <…> (8) to

construct buildings, which are not related with the reservation establishment objectives, save buildings in the existing and in former homesteads (when there are remnants of former structures and/or gardens, or when the homesteads are marked in the maps of the locality or in other maps, as well as when the legal fact is established), as well as the places established in reservations maintenance plans or projects and in documents of general planning, to construct buildings or increase their size on the slopes whose grade is bigger than 15 degrees, as well as closer than 50 metres from the bottom or top edge of the slope" of Paragraph 2 (wording of 4 December 2001) of Article 9 of the Law on Protected Territories, the provision "In state parks it shall be prohibited: <…> (5) to construct new residential houses, the outhouse and other buildings of the farmer or to increase their size on the slopes whose grade is bigger than 15 degrees, as well as closer than 50 metres from the bottom or top edge of the slope, to construct structures, which decrease the aesthetical value of the landscape, <…>" of Paragraph 2 (wording of 4 December 2001) of Article 13 of the same law, the provision "In the protection zones of surface water bodies it shall be prohibited: <…> (4) to change the existing line of building by reconstruction or rebuilding structures in the existing and in former homesteads (when there are remnants of former structures and/or gardens, or when the homesteads are marked in the maps of the locality or in other maps, as well as when the legal fact is established) save the cases established in territorial planning documents" of Paragraph 3 (wording of 4 December 2001) and provisions of Paragraph 6 (wording of 4 December 2001) of Article 20 of the same law have not been amended or supplemented.

3. As held in this ruling of the Constitutional Court: the variety of areas of special value can determine the peculiarities of their legal regime, the ways of protection of the objects which are in such areas, as well as the conditions of, and limitations and prohibitions on the activity in such areas; such limitations and prohibitions may be applied, *inter alia,* to the economic activity and construction in these areas, as well as to some other activity, due to which the landscape, individual objects which are in corresponding areas can be changed, etc.; the said limitations and prohibitions by which one seeks to ensure the protection of areas of particular value—the public interest—may and must be established in regard of all owners and users of such objects; also such limitations and prohibitions may be established whereby one to certain extent interferes with the rights of ownership of all owners, including those of private land plots, forests, parks and water bodies. It has also been held that all said limitations and prohibitions must be constitutionally grounded, they must not restrict the rights of the owners and other persons more than it is necessary to achieve the universally important objectives.

4. It should be held that by the limitations and prohibitions established in Item 8 (wording of 4 December 2001) of Paragraph 2 of Article 9, Item 5 (wording of 4 December 2001) of Paragraph 2 of Article 13, Item 4 (wording of 4 December 2001) of Paragraph 3 and Paragraph 6 of Article 20

of the Law on Protected Territories it was sought to ensure that one will not build any structures which could change the aesthetical value of the landscape, which could diminish the value of the objects existing in corresponding localities, or any structures whose building and exploitation might create pre-conditions for contaminating the natural environment or inflicting harm upon nature otherwise, and/or any structures whose building and exploitation might pose threat for people's security, health, etc.

5. As mentioned before, the state, when being under the constitutional obligation to act so that the protection of the natural environment and individual objects of nature as well as areas of particular value, and the rational use, restoration and augmentation of natural resources are ensured, may also establish, by means of laws, the legal regulation whereby also such limitations and prohibitions would be established to the owners of corresponding objects, which are in areas of particular value, whereby to a certain extent one interferes with the rights of ownership of the owners of private land lots. It has also been mentioned that such limitations and prohibitions must be proportionate to the constitutionally grounded objective sought.

6. It should be held that there are not enough legal arguments, which would permit asserting assert that the limitations and prohibitions established in Item 8 (wording of 4 December 2001) of Paragraph 2 of Article 9, Item 5 (wording of 4 December 2001) of Paragraph 2 of Article 13, Item 4 (wording of 4 December 2001) of Paragraph 3 and Paragraph 6 of Article 20 of the Law on Protected Territories are disproportionate to the constitutionally grounded objective sought and that the rights of ownership of the owners are restricted more than is permitted by the Constitution.

7. It should also be noted that Item 8 (wording of 4 December 2001) of Paragraph 2 of Article 9, Item 5 (wording of 4 December 2001) of Paragraph 2 of Article 13, Item 4 (wording of 4 December 2001) of Paragraph 3 and Paragraph 6 of Article 20 of the Law on Protected Territories do not contain any provisions which would permit treating persons as enjoying not equal rights.

8. Taking account of the arguments set forth, the conclusion should be drawn that provision "In natural and complex reservations, it shall be prohibited: <…> (8) to construct buildings, which are not related with the reservation establishment objectives, save buildings in the existing and in former homesteads (when there are remnants of former structures and/or gardens, or when the homesteads are marked in the maps of the locality or in other maps, as well as when the legal fact is established), as well as the places established in reservations maintenance plans or projects and in documents of general planning, to construct buildings or increase their size on the slopes whose grade is bigger than 15 degrees, as well as closer than 50 metres from the bottom or top edge of the slope" of Paragraph 2 (wording of 4 December 2001) of Article 9 of the Law on Protected Territories, the provision "In state parks it shall be prohibited: <…> (5) to construct new residential houses, the outhouse and other buildings of the farmer or to increase their size on the slopes whose

grade is bigger than 15 degrees, as well as closer than 50 metres from the bottom or top edge of the slope, to construct structures, which decrease the aesthetical value of the landscape, <…>" of Paragraph 2 (wording of 4 December 2001) of Article 13 of the same law, the provision "In the protection zones of surface water bodies it shall be prohibited: <…> (4) to change the existing line of building by reconstruction or rebuilding structures in the existing and in former homesteads (when there are remnants of former structures and/or gardens, or when the homesteads are marked in the maps of the locality or in other maps, as well as when the legal fact is established) save the cases established in territorial planning documents" of Paragraph 3 (wording of 4 December 2001) and provisions of Paragraph 6 (wording of 4 December 2001) of Article 20 of the same law are not in conflict with Paragraphs 1 and 2 of Article 23 and Paragraph 1 of Article 29 of the Constitution.

XII

On the compliance of the provision "The construction of buildings in the forestry land is permitted <…>, when such buildings are needed for forestry activities" of Item 2 of the Regulation for Construction on Private Land as approved by the Government Resolution (No. 1608) "On Approving the Regulation for Construction on Private Land" of 22 December 1995 with Paragraphs 1 and 2 of Article 23 and Paragraph 1 of Article 29 of the Constitution.

1. By its Regulation for Construction on Private Land as approved by the Government Resolution (No. 1608) "On Approving the Regulation for Construction on Private Land" of 22 December 1995 (Official Gazette *Valstybės žinios,* 1995, No. 106-2379), the Government approved the Regulation for Construction on Private Land. It came into force on 30 December 1995.

2. Item 2 of the Regulation provides: "The construction of buildings in the forestry land is permitted for the owners of these forests according to the prepared detailed plans, when such buildings are needed for forestry activities."

3. It has been mentioned that forests are special objects of property, that by means of the law a special, exceptional legal regime may be established in regard of forests, that a special ecologic, social and economic significance of the forest to the environment determines certain limitations and restrictions of the rights of ownership, and that such limitations and restrictions must be proportionate to the constitutionally grounded objective sought.

4. When deciding on the compliance of the provision "The construction of buildings in the forestry land is permitted <…>, when such buildings are needed for forestry activities" of Item 2 of the Regulation with Paragraphs 1 and 2 of Article 23 and Paragraph 1 of Article 29 of the Constitution, one must investigate into the relation of the legal regulation established in Item 2 of the Regulation with the legal regulation established in the laws regulating construction in forestry land.

5. The relations of construction in forestry land are regulated, *inter alia,* by the Forestry Law

and the Law on Land.

It needs to be noted that, in the aspect under investigation, the fact that the notions “forest land” and “forestry land” do not completely coincide is not of importance, since the said differences are not essential ones.

6. Under Paragraph 1 (wording of 22 November 1994) of Article 3 of the Forestry Law, *inter alia,* timber storage points and other land plots occupied by the equipment related with the forest are categorised as forest land.

The Forestry Law, *inter alia,* Article 3 (wording of 22 November 1994) thereof has been amended and/or supplemented more than once, however, the said provision has not been amended neither after the Seimas adopted the Republic of Lithuania’s Law on Amending the Forestry Law on 10 April 2001, by Article 1 whereof the Forestry Law was amended and set forth in a new wording, nor after the Forestry Law was set forth in a new wording, however, such a provision is consolidated in Paragraph 3 of Article 2 of the Forestry Law (wording of 10 April 2001) (by replacing the word “equipment” with the word “facilities”).

Later, the Forestry Law (wording of 10 April 2001), *inter alia,* Article 2 thereof, has been amended and supplemented more than once, however, the provision that, *inter alia,* timber storage points and other land plots occupied by the equipment related with the forest are categorised as forest land has not been amended.

It needs to be noted that the Forestry Law did not nor does it contain any provisions which would define what structures *(inter alia,* buildings) may be placed on forest (forestry) land.

After one compares the provision “The construction of buildings in the forestry land is permitted <…>, when such buildings are needed for forestry activities” of Item 2 of the Regulation with Paragraph 1 of Article 3 (wording of 22 November 1994 with subsequent amendments and supplements) and Paragraph 3 of Article 2 (wording of 10 April 2001 with subsequent amendments and supplements) of the Forestry Law, it becomes clear that under the Forestry Law construction of timber storage points and other equipment (facilities) related with the forest was permitted, while, under the Regulation, in forestry land, construction of buildings which were needed for forestry activity was permitted. It is obvious that the notion “buildings” employed in Item 2 of the Regulation is broader than the notion “timber storage points and other equipment (facilities) related with the forest” employed in the Forestry Law. Thus, Item 2 of the Regulation also permits the construction of such buildings in forestry land, whose construction is not permitted by the Forestry Law.

It needs to be held that the provision “The construction of buildings in the forestry land is permitted <…>, when such buildings are needed for forestry activities” of Item 2 of the Regulation competes with the legal regulation established in Paragraph 1 of Article 3 (wording of 22 November

1994 with subsequent amendments and supplements) and Paragraph 3 of Article 2 (wording of 10 April 2001 with subsequent amendments and supplements) of the Forestry Law.

7. Under Item 3 (wording of 26 April 1994) of Paragraph 1 of Article 40 of the Law on Land, land for forestry purposes, *inter alia,* comprised land occupied by timber storage points and other constructions and facilities used for forestry needs.

The Law on Land, *inter alia*, Article 40 (wording of 26 April 1994) thereof, was amended and/or supplemented more than once, however, the said provision had not been amended until the Seimas adopted the Law on Amending the Law on Land on 27 January 2004, by Article 1 whereof the Law on Land was set forth in a new wording. The Law on Land of the new wording came into force on 21 February 2004.

Under Item 3 (wording of 27 January 2004) of Paragraph 1 of Article 26 of the Law on Land, land plots occupied by timber storage points and other constructions and facilities related to the forest were categorised as land for forestry purposes.

The Law on Land (wording of 27 January 2004) was amended and/or supplemented more than once, however, the aforementioned provision has not been amended.

It needs to be noted that the Law on Land did not, nor does it contain any other provisions which would define which constructions *(inter alia,* buildings) could be on forest land (land for forestry purposes).

When one compares the provision "The construction of buildings in the forestry land is permitted <…>, when such buildings are needed for forestry activities" of Item 2 of the Regulation with Item 3 of Paragraph 1 of Article 40 (wording of 26 April 1994) and Item 3 (wording of 27 January 2004) of Paragraph 1 and Article 26 of the Law on Land, it is becomes clear that:

– Item 2 of the Regulation also did not permit the construction of such buildings on forestry land, whose construction was not permitted by the Law on Land (wording of 26 April 1994 with subsequent amendments and supplements);

– under Item 2 of the Regulation, the construction of such buildings is also permitted on forestry land, whose construction is not permitted under the Law on Law (wording of 27 January 2004 with subsequent amendments and supplements) and under Item 3 (wording of 27 January 2004) of Paragraph 1 and Article 26 thereof in particular, since the notion "buildings" of Item 2 of the Regulation is broader than the notion "timber storage points and other land plots occupied by facilities related with the forest".

It needs to be noted that the provision "The construction of buildings in the forestry land is permitted <…>, when such buildings are needed for forestry activities" of Item 2 of the Regulation competes with the legal regulation established in Item 3 (wording of 27 January 2004) of Paragraph 1 of Article 26 of the Law on Land.

8. It should be held that there are not enough legal arguments permitting asserting that the above-discussed limitations established in the Forestry Law and the Law on Land, especially when one takes account of the character of forests as special objects of ownership, of their special ecologic, social and economic significance to the environment are disproportionate to the constitutionally grounded objective sought and that the rights of ownership of the owners are restricted more than permitted by the Constitution.

9. Taking account of the arguments set forth, it should be held that the provision "The construction of buildings in the forestry land is permitted <…>, when such buildings are needed for forestry activities" of Item 2 of the Regulation to the extent that it permits the construction of not only timber storage points and facilities related with the forest, but also other buildings is in conflict with Paragraph 3 of Article 2 (wording of 10 April 2001 with subsequent amendments and supplements) of the Forestry Law and Item 3 (wording of 27 January 2004 with subsequent amendments and supplements) of Paragraph 1 of Article 26 of the Law on Land.

10. It has been mentioned that when the relations linked with the ownership and use of land, forests, parks, water bodies, including those which are in area of particular value, are regulated by means of legal acts, one must pay heed to the norms and principles of the Constitution, *inter alia*, the constitutional principle of a state under the rule of law, also that the constitutional principle of a state under the rule of law implies the hierarchy of all legal acts and that it does not permit one to regulate those relations by means of substatutory legal acts, which may be regulated by means of laws only, nor does it permit one to establish any such legal regulation which would compete with that established in the law and which would not be grounded on laws.

The Constitutional Court has held that Items 2 and 7 of Article 94 of the Constitution, which stipulate that the Government shall implement laws and that it shall discharge other duties prescribed to it by the Constitution and other laws, should be interpreted as ones establishing the duty for the Government to supplement its previously adopted acts so that they become in conformity with subsequently adopted laws or to repeal its previously adopted acts in case the legal norms established therein are in conflict with those of the law (the Constitutional Court's rulings of 15 May 2001 and 13 May 2005).

11. Having held that the provision "The construction of buildings in the forestry land is permitted <…>, when such buildings are needed for forestry activities" of Item 2 of the Regulation to the extent that it permits the construction of not only timber storage points and facilities related with the forest, but also other buildings is in conflict with Paragraph 3 of Article 2 (wording of 10 April 2001 with subsequent amendments and supplements) of the Forestry Law and Item 3 (wording of 27 January 2004 with subsequent amendments and supplements) of Paragraph 1 of Article 26 of the Law on Land, it should also be held that the provision "The construction of

buildings in the forestry land is permitted <…>, when such buildings are needed for forestry activities" of Item 2 of the Regulation to the same extent is also in conflict with Items 2 and 7 of Article 94 of the Constitution and the constitutional principle of a state under the rule of law.

12. Having held that the provision "The construction of buildings in the forestry land is permitted <…>, when such buildings are needed for forestry activities" of Item 2 of the Regulation to the extent that it permits the construction of not only timber storage points and facilities related with the forest, but also other buildings is in conflict with Items 2 and 7 of Article 94 of the Constitution, in the constitutional justice case at issue the Constitutional Court will not investigate whether the impugned provision of Item 2 of the Regulation is not in conflict with Paragraphs 1 and 2 of Article 23 and Paragraph 1 of Article 29 of the Constitution.

Conforming to Articles 102 and 105 of the Constitution of the Republic of Lithuania, and Articles 1, 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:

1. To recognise that the provision "In natural and complex reservations, it shall be prohibited: <…> (8) to construct structures, which are not related with the reservation establishment objectives, save buildings in the existing and in former homesteads (when there are remnants of former structures and/or gardens, or when the homesteads are marked in the maps of the locality or in other maps, as well as when the legal fact is established), as well as the places established in reservations maintenance plans or projects and in documents of general planning, to construct buildings or increase their size on the slopes whose grade is bigger than 15 degrees, as well as closer than 50 metres from the bottom or top edge of the slope" of Paragraph 2 (wording of 4 December 2001; Official Gazette *Valstybės žinios,* 2001, No. 108-3902) of Article 9 of the Republic of Lithuania's Law on Protected Territories, the provision "In state parks it shall be prohibited: <…> (5) to construct new residential houses, the outhouse and other buildings of the farmer or to increase their size on the slopes whose grade is bigger than 15 degrees, as well as closer than 50 metres from the bottom or top edge of the slope, to construct structures, which decrease the aesthetical value of the landscape, <…>" of Paragraph 2 (wording of 4 December 2001; Official Gazette *Valstybės žinios,* 2001, No. 108-3902) of Article 13 of the same law, the provision "In the protection zones of surface water bodies it shall be prohibited: <…> (4) to change the existing line of building by reconstruction or rebuilding structures in the existing and in former homesteads (when there are remnants of former structures and/or gardens, or when the homesteads are marked in the maps of the locality or in other maps, as well as when the legal fact is established) save the cases established in territorial planning documents" of Paragraph 3 (wording of 4 December 2001;

Official Gazette *Valstybės žinios,* 2001, No. 108-3902) and Paragraph 6 (wording of 4 December 2001; Official Gazette *Valstybės žinios,* 2001, No. 108-3902) of Article 20 as well as Paragraph 9 (wording of 4 December 2001; Official Gazette *Valstybės žinios,* 2001, No. 108-3902) of Article 31 of the same law, are not in conflict with the Constitution of the Republic of Lithuania.

2. To recognise that Paragraph 3 (wording of 10 April 2001; Official Gazette *Valstybės žinios,* 2001, No. 35-1161) of Article 4 and Paragraph 3 (wording of 10 April 2001; Official Gazette *Valstybės žinios,* 2001, No. 35-1161) of Article 8 of the Republic of Lithuania Forestry Law to the extent that it provides that trips to forests and use of forest resources in protected territories are regulated, *inter alia,* by the regulations of protected territories as approved by the Government or the Ministry of Environment are not in conflict with of the Constitution of the Republic of Lithuania.

3. To recognise that Paragraph 10 (wording of 26 April 1994; Official Gazette *Valstybės žinios,* 1994, No. 34-620) and Paragraph 11 (wording of 3 August 2001; Official Gazette *Valstybės žinios,* 2001, No. 71-2519) of Article 18 of the Republic of Lithuania's Law on Land were not in conflict with the Constitution of the Republic of Lithuania.

4. To recognise that "The land of reservations, state parks-reservations <…> shall be state property" of Paragraph 1 (wording of 4 July 1995; Official Gazette *Valstybės žinios,* 1995, No. 60-1502) of Article 5 of the Republic of Lithuania's Law on Protected Territories and the provision "The land of reservations <…> shall be exclusive state property" of Paragraph 1 (wording of 4 December 2001; Official Gazette *Valstybės žinios,* 2001, No. 108-3902) of Article 31 of the same law were not in conflict with Item 2 of Paragraph 1 of Article 7 of the Constitutional Law on the Subjects, Procedure, Terms and Conditions of, and Limitations on, the Acquisition into Ownership of Land Plots Provided for in Paragraph 2 of Article 47 of the Constitution of the Republic of Lithuania (wording of 20 June 1996).

5. To recognise that Paragraph 4 (wording of 4 July 1995; Official Gazette *Valstybės žinios,* 1995, No. 60-1502) of Article 5 and Paragraph 7 (wording of 4 December 2001; Official Gazette *Valstybės žinios,* 2001, No. 108-3902) of the Republic of Lithuania's Law on Protected Territories were not in conflict with Item 6 of Paragraph 1 of Article 7 of the Constitutional Law on the Subjects, Procedure, Terms and Conditions of, and Limitations on, the Acquisition into Ownership of Land Plots Provided for in Paragraph 2 of Article 47 of the Constitution of the Republic of Lithuania (wording of 20 June 1996).

6. To recognise that the provision "In the territories of state parks and state sanctuaries, only the lots of the premises, of personal smallholdings or gardeners' societies and the land plots which are between private land lots, which are suitable for agricultural activities and which are not bigger than 5 ha, can be sold to private ownership" of Paragraph 6 (wording of 11 December 2001;

Official Gazette *Valstybės žinios,* 2001, No. 108-3905) of Article 8 of the Republic of Lithuania's Law on Land Reform was not in conflict with Item 2 of Paragraph 1 of Article 7 of the Constitutional Law on the Subjects, Procedure, Terms and Conditions of, and Limitations on, the Acquisition into Ownership of Land Plots Provided for in Paragraph 2 of Article 47 of the Constitution of the Republic of Lithuania (wording of 20 June 1996).

7. To recognise that the provision "The construction of buildings in the forestry land is permitted <…>, when such buildings are needed for forestry activities" of Item 2 of the Regulation for Construction on Private Land as approved by the Resolution of the Government of the Republic of Lithuania (No. 1608) "On Approving the Regulation for Construction on Private Land" of 22 December 1995 (Official Gazette *Valstybės žinios,* 1995, No. 106-2379) to the extent that it permits the construction of not only timber storage points and facilities related with the forest, but also other buildings is in conflict with Items 2 and 7 of Article 94 of the Constitution of the Republic of Lithuania and the constitutional principle of a state under the rule of law as well as with Paragraph 3 of Article 2 (wording of 10 April 2001 with subsequent amendments and supplements) of the Republic of Lithuania Forestry Law and Item 3 (wording of 27 January 2004 with subsequent amendments and supplements) of Paragraph 1 of Article 26 of the Republic of Lithuania's Law on Land.

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:

Armanas Abramavičius
Toma Birmontienė
Egidijus Kūris
Kęstutis Lapinskas
Zenonas Namavičius
Ramutė Ruškytė
Vytautas Sinkevičius
Stasys Stačiokas
Romualdas Kęstutis Urbaitis