Case No. 02/06-23/06-37/06-50/06-31/07

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LITHUANIA

RULING

ON THE COMPLIANCE OF PARAGRAPH 8 (WORDING OF 9 MARCH 2004) OF ARTICLE 18, PARAGRAPH 17 (WORDINGS OF 9 MARCH 2004 AND 25 APRIL 2006) OF ARTICLE 34 AND ARTICLE 41 (WORDING OF 9 MARCH 2004) OF THE REPUBLIC OF LITHUANIA'S LAW ON ALCOHOL CONTROL WITH THE CONSTITUTION OF THE REPUBLIC OF LITHUANIA, ON THE COMPLIANCE OF ITEMS 28.5 AND 51.5 (WORDING OF 20 MAY 2004) AND ITEM 51 (WORDING OF 20 MAY 2004) OF THE RULES OF LICENSING THE WHOLESALE AND RETAIL TRADE IN ALCOHOLIC PRODUCTS AS APPROVED BY THE RESOLUTION OF THE GOVERNMENT OF THE REPUBLIC OF LITHUANIA (NO. 618) "ON APPROVING THE RULES OF LICENSING THE WHOLESALE AND RETAIL TRADE IN ALCOHOLIC PRODUCTS AND THE RULES OF THE RETAIL TRADE IN ALCOHOLIC BEVERAGES AT THE ENTERPRISES OF TRADE AND PUBLIC CATERING" OF 20 MAY 2004 WITH THE CONSTITUTION OF THE REPUBLIC OF LITHUANIA AND PARAGRAPH 17 (WORDINGS OF 9 MARCH 2004 AND 25 APRIL 2006) OF ARTICLE 34 OF THE REPUBLIC OF LITHUANIA'S LAW ON ALCOHOL CONTROL, ON THE COMPLIANCE OF ITEM 51 (WORDING OF 17 OCTOBER 2006) OF THESE RULES WITH THE CONSTITUTION OF THE REPUBLIC OF LITHUANIA AND PARAGRAPH 17 (WORDING OF 25 APRIL 2006) OF ARTICLE 34 OF THE REPUBLIC OF LITHUANIA'S LAW ON ALCOHOL CONTROL, AND ON THE COMPLIANCE OF ITEM 51 (WORDING OF 2 MAY 2007) OF THESE RULES WITH THE CONSTITUTION OF THE REPUBLIC OF LITHUANIA AND PARAGRAPH 17 (WORDINGS OF 25 APRIL 2006 AND 21 JUNE 2007) OF ARTICLE 34 OF THE REPUBLIC OF LITHUANIA'S LAW ON ALCOHOL CONTROL

21 January 2008

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

Liucija Schulte-Ebbert, Head of the European Union and International Law Unit of the Legal Department of the Office of the Seimas (representing the Seimas of the Republic of Lithuania, the party concerned, in the part of the case subsequent to petitions Nos. 1B-35/2005, 1B-23/2006 and 1B-30/2006 of the Supreme Administrative Court of Lithuania, a petitioner), acting as the representative of the Seimas of the Republic of Lithuania, the party concerned

Neringa Pažūsienė, Director of Law and Public Procurement Department of the Ministry of Economy of the Republic of Lithuania (representing the Government of the Republic of Lithuania, the party concerned, in the part of the case subsequent to petitions Nos. 1B-23/2006 and 1B-30/2006 of the Vilnius Regional Administrative Court, a petitioner and subsequent to Petition No. 1B-40/2007 of the Vilnius Regional Administrative Court), Birutė Janutėnienė, Deputy Head of the Internal Trade Division of the Trade Department of the Ministry of Economy of the Republic of Lithuania (representing the Government of the Republic of Lithuania, the party concerned, in the part of the case subsequent to petitions Nos. 1B-35/2005, 1B-23/2006 and 1B-30/2006 of the Supreme Administrative Court of Lithuania, a petitioner, and subsequent to Petition No. 1B-40/2007 of the Vilnius Regional Administrative Court), acting as the representatives of the Government of the Republic of Lithuania, the 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 of the Law on the Constitutional Court of the Republic of Lithuania, in its public hearing, on 9 January 2008, considered constitutional justice case No. 02/06-23/06-37/06-50/06-31/07 subsequent to:

1) the petition (No. 1B-35/2005) of the Supreme Administrative Court of Lithuania, a petitioner, requesting an investigation into:

– whether Paragraph 17 (wording of 9 March 2004) of Article 34 of the Republic of Lithuania's Law on Alcohol Control, Item 51.5 of the Rules of Licensing the Wholesale and Retail Trade in Alcoholic Products as approved by the Resolution of the Government of the Republic of Lithuania (No. 618) "On Approving the Rules of Licensing the Wholesale and Retail Trade in Alcoholic Products and the Rules of the Retail Trade in Alcoholic Beverages at the Enterprises of Trade and Public Catering" of 20 May 2004, to the extent that, according to the petitioner, it does not provide for the possibility of not abolishing the validity of the licence to engage in the wholesale or retail trade in alcoholic products, after account is taken of the nature of the violation of

law, the circumstances mitigating the liability and other significant circumstances, are not in conflict with the constitutional principles of justice and a state under the rule of law;

– whether Paragraph 17 (wording of 9 March 2004) of Article 34 of the Republic of Lithuania's Law on Alcohol Control, and Items 51.5 and 28.5 of the Rules of Licensing the Wholesale and Retail Trade in Alcoholic Products as approved by the Resolution of the Government of the Republic of Lithuania (No. 618) "On Approving the Rules of Licensing the Wholesale and Retail Trade in Alcoholic Products and the Rules of the Retail Trade in Alcoholic Beverages at the Enterprises of Trade and Public Catering" of 20 May 2004 are not in conflict with Paragraph 5 of Article 31 of the Constitution of the Republic of Lithuania;

2) the petition (No. 1B-23/2006) of the Supreme Administrative Court of Lithuania requesting an investigation into:

– whether Paragraph 17 (wording of 9 March 2004) of Article 34 of the Republic of Lithuania's Law on Alcohol Control, Item 51.5 of the Rules of Licensing the Wholesale and Retail Trade in Alcoholic Products as approved by the Resolution of the Government of the Republic of Lithuania (No. 618) "On Approving the Rules of Licensing the Wholesale and Retail Trade in Alcoholic Products and the Rules of the Retail Trade in Alcoholic Beverages at the Enterprises of Trade and Public Catering" of 20 May 2004, to the extent that, according to the petitioner, it does not provide for the possibility of not abolishing the validity of the licence to engage in the wholesale or retail trade in alcoholic products, after account is taken of the nature of the violation of law, the circumstances mitigating the liability and other significant circumstances, are not in conflict with the constitutional principles of justice and a state under the rule of law;

– whether Paragraph 17 (wording of 9 March 2004) of Article 34 of the Republic of Lithuania's Law on Alcohol Control, and Items 51.5 and 28.5 of the Rules of Licensing the Wholesale and Retail Trade in Alcoholic Products as approved by the Resolution of the Government of the Republic of Lithuania (No. 618) "On Approving the Rules of Licensing the Wholesale and Retail Trade in Alcoholic Products and the Rules of the Retail Trade in Alcoholic Beverages at the Enterprises of Trade and Public Catering" of 20 May 2004 are not in conflict with Paragraph 5 of Article 31 of the Constitution of the Republic of Lithuania;

3) the petition (No. 1B-30/2006) of the Supreme Administrative Court of Lithuania, a petitioner, requesting an investigation into whether Paragraph 17 (wordings of 9 March 2004 and 25 April 2006) of Article 34 of the Republic of Lithuania's Law on Alcohol Control, and Items 28.5 and 51.5 of the Rules of Licensing the Wholesale and Retail Trade in Alcoholic Products as approved by the Resolution of the Government of the Republic of Lithuania (No. 618) "On Approving the Rules of Licensing the Wholesale and Retail Trade in Alcoholic Products and the Rules of the Retail Trade in Alcoholic Beverages at the Enterprises of Trade and Public Catering" of

20 May 2004 are not in conflict with Paragraph 1 of Article 109 of the Constitution of the Republic of Lithuania and with the constitutional principles of justice and a state under the rule of law;

4) the petition (No. 1B-51/2006) of the Šiauliai Regional Administrative Court, a petitioner, requesting an investigation into whether Paragraph 8 of Article 18 of the Republic of Lithuania's Law on Alcohol Control is not in conflict with Articles 29 and 46 of the Constitution of the Republic of Lithuania, and with the constitutional principles of a state under the rule of law and the protection of legitimate expectations;

5) the petition (No. 1B-40/2007) of the Vilnius Regional Administrative Court, a petitioner, requesting an investigation into whether Item 51.6 of the Rules of Licensing the Wholesale and Retail Trade in Alcoholic Products as approved by the Resolution of the Government of the Republic of Lithuania (No. 618) "On Approving the Rules of Licensing the Wholesale and Retail Trade in Alcoholic Products and the Rules of the Retail Trade in Alcoholic Beverages at the Enterprises of Trade and Public Catering" of 20 May 2004 is not in conflict with Paragraph 5 of Article 31, Article 46 and Paragraph 1 of Article 109 of the Constitution of the Republic of Lithuania, with the constitutional principles of justice and a state under the rule of law and with Paragraph 17 of Article 34 of the Republic of Lithuania's Law on Alcohol Control.

By the 1 October 2007 Decision "On Joining Petitions into One Case" of the Constitutional Court of the Republic of Lithuania, petitions No. 1B-35/2005, No. 1B-23/2006 and No. 1B-30/2006 of the Supreme Administrative Court of Lithuania, a petitioner, and petition No. 1B-51/2006 the Šiauliai Regional Administrative Court, a petitioner, were joined into one case and it was given reference No. 02/06-23/06-37/06-50/06.

By the 20 December 2007 Decision "On Joining Petitions into One Case" of the Constitutional Court of the Republic of Lithuania, petitions No. 1B-35/2005, No. 1B-23/2006 and No. 1B-30/2006 of the Supreme Administrative Court of Lithuania, a petitioner, and petition No. 1B-51/2006 the Šiauliai Regional Administrative Court, a petitioner, (which were joined into one case No. 02/06-23/06-37/06-50/06) and petition No. 1B-40/2007 (case No. 31/07) of the Vilnius Regional Administrative Court, a petitioner, were joined into one case and it was given reference No. 02/06-23/06-37/06-50/06-31/07.

The Constitutional Court

has established:

I

1. The Supreme Administrative Court of Lithuania, a petitioner, was investigating an administrative case. By its ruling, the said court suspended the consideration of the case and applied to the Constitutional Court with the petition (No. 1B-35/2005) requesting an investigation into:

– whether Paragraph 17 (wording of 9 March 2004) of Article 34 of the Law on Alcohol Control (hereinafter also referred to as the Law), Item 51.5 of the Rules of Licensing the Wholesale and Retail Trade in Alcoholic Products (hereinafter also referred to as the Rules) as approved by the Government Resolution (No. 618) "On Approving the Rules of Licensing the Wholesale and Retail Trade in Alcoholic Products and the Rules of the Retail Trade in Alcoholic Beverages at the Enterprises of Trade and Public Catering" of 20 May 2004 (hereinafter also referred to as government resolution No. 618 of 20 May 2004), to the extent that, according to the petitioner, it does not provide for the possibility of not abolishing the validity of the licence to engage in the wholesale or retail trade in alcoholic products, after account is taken of the nature of the violation of law, the circumstances mitigating the liability and other significant circumstances, are not in conflict with the constitutional principles of justice and a state under the rule of law;

– whether Paragraph 17 (wording of 9 March 2004) of Article 34 of the Law, and Items 51.5 and 28.5 of the Rules as approved by government resolution No. 618 of 20 May 2004 are not in conflict with Paragraph 5 of Article 31 of the Constitution.

2. The Supreme Administrative Court of Lithuania, a petitioner, was investigating an administrative case. By its ruling, the said court suspended the consideration of the case and applied to the Constitutional Court with the petition (No. 1B-23/2006) requesting an investigation into:

– whether Paragraph 17 (wording of 9 March 2004) of Article 34 of the Law, and Item 51.5 of the Rules as approved by government resolution No. 618 of 20 May 2004, to the extent that, according to the petitioner, it does not provide for the possibility of not abolishing the validity of the licence to engage in the wholesale or retail trade in alcoholic products, after account is taken of the nature of the violation of law, the circumstances mitigating the liability and other significant circumstances, are not in conflict with the constitutional principles of justice and a state under the rule of law;

– whether Paragraph 17 (wording of 9 March 2004) of Article 34 of the Law, and Items 51.5 and 28.5 of the Rules as approved by government resolution No. 618 of 20 May 2004 are not in conflict with Paragraph 5 of Article 31 of the Constitution.

3. The Supreme Administrative Court of Lithuania, a petitioner, was investigating an administrative case. By its ruling, the said court suspended the consideration of the case and applied to the Constitutional Court with the petition (No. 1B-30/2006) requesting an investigation into whether Paragraph 17 (wordings of 9 March 2004 and 25 April 2006) of Article 34 of the Law, and Items 28.5 and 51.5 of the Rules as approved by government resolution No. 618 of 20 May 2004 are not in conflict with Paragraph 1 of Article 109 of the Constitution and with the constitutional principles of justice and a state under the rule of law.

4. The Šiauliai Regional Administrative Court, a petitioner, was investigating an

administrative case. By its ruling, the said court suspended the consideration of the case and applied to the Constitutional Court with the petition (No. 1B-51/2006) requesting an investigation into whether Paragraph 8 of Article 18 of the Law is not in conflict with Articles 29 and 46 of the Constitution, and with the constitutional principles of a state under the rule of law and the protection of legitimate expectations.

5. The Vilnius Regional Administrative Court, a petitioner, was investigating an administrative case. By its ruling, the said court suspended the consideration of the case and applied to the Constitutional Court with the petition (No. 1B-40/2007) requesting an investigation into whether Item 51.6 of the Rules as approved by government resolution No. 618 of 20 May 2004 is not in conflict with Paragraph 5 of Article 31, Article 46 and Paragraph 1 of Article 109 of the Constitution, with the constitutional principles of justice and a state under the rule of law and with Paragraph 17 of Article 34 of the Law.

II

1. The petition (No. 1B-35/2005) of the Supreme Administrative Court of Lithuania, a petitioner, requesting an investigation into whether Paragraph 17 (wording of 9 March 2004) of Article 34 of the Law, and Item 51.5 of the Rules as approved by government resolution No. 618 of 20 May 2004, to the extent that, according to the petitioner, it does not provide for the possibility of not abolishing the validity of the licence to engage in the wholesale or retail trade in alcoholic products, after account is taken of the nature of the violation of law, the circumstances mitigating the liability and other significant circumstances, are not in conflict with the constitutional principles of justice and a state under the rule of law, as well as whether Paragraph 17 (wording of 9 March 2004) of Article 34 of the Law, and Items 51.5 and 28.5 of the Rules as approved by government resolution No. 618 of 20 May 2004 are not in conflict with Paragraph 5 of Article 31 of the Constitution, is based on the following arguments.

1.1. Paragraph 1 (wording of 9 March 2004) of Article 34 of the Law provides: "For enterprises, having licences to engage in wholesale or retail trade in alcoholic products which do not comply with the requirements of Items 1, 2, 4, 5, 8 and 9 of Paragraph 1 and Items 1, 2, 4 and 7 of Paragraph 2 of Article 17 of this Law, the validity of the licences shall be abolished and new licences shall not be issued for five years from the day of the abolishment of the validity of the licences."

Under Item 28.5 of the Rules, the licences shall not be issued "if the validity of the licence was abolished under the requirements established in Items 51.5 and 51.6 of these Rules (the licence shall not be issued for five years from the day of the abolishment of the validity of the licence)", while under Item 51.5, the validity of the licence shall be abolished, if "the holder of the licence does not follow the requirements of Items 1, 2, 4, 5, 8 and 9 of Paragraph 1 and Items 1, 2, 4 and 7

of Paragraph 2 of Article 17 of the Republic of Lithuania's Law on Alcohol Control".

These provisions are imperative and mean that for each of the specified violations of law, the validity of the licence must be abolished and the new licence not issued for five years from the day of the abolishment of the validity of the license; one has to apply this sanction disregarding the circumstances, extent, the circumstances mitigating the liability and other significant circumstances of the commission of the violation. In the opinion of the Supreme Administrative Court of Lithuania, a petitioner, in certain cases, this sanction, especially taking account of the fact that for the same violation of law another sanction—a fine—has already been imposed, may be obviously too big for the person who violated law, disproportionate to the committed violation of law, thus, unfair. By abolishing the validity of the licence for a small violation of law which was committed for the first time and by not issuing the new licence for five years from the day of the abolishment of the validity of the licence, one ruins the activity of the enterprise; it is doubtful, whether the said imperative requirement to abolish the validity of the licence and not to issue a new licence for 5 years in all cases, when the corresponding violation of law is established disregarding the circumstances under which it was committed, is a necessary measure in order to seek the objectives which are universally important.

1.2. The principle *non bis in idem* which is enshrined in Paragraph 5 of Article 31 of the Constitution prohibits punishing a second time for the same violation of law. The economic sanctions which are imposed under Article 34 (wording of 9 March 2004) of the Law are measures of repressive nature which are applied for the violations of law, thus, while applying them, one must also follow the constitutional principle *non bis in idem.*

For the violations of law which are specified in Paragraph 17 (wording of 9 March 2004) of Article 34 of the Law, not only the abolishment of the validity of the licence and non-issuance of a new licence for five years from the day of the abolishment of the validity of the licence, but also the fines are established (Paragraph 2 of Article 34 of the Law), which are imposed by the State Tobacco and Alcohol Control Service (hereinafter also referred to as the Service) and the police (Paragraph 11 of Article 34 of the Law), and the validity of the licence is abolished by the executive institution of the municipality (Item 7 of the Rules); it does so when the resolution of the corresponding institution regarding the imposition of the fine comes into effect. Thus, both of these sanctions—the fine and the abolishment of the validity of the licence—are applied by different institutions at different time. In addition, abolishment of the validity of the licence, as a sanction, according to its meaning and consequences, is similar to the punishment of a limitation on the activity of the legal person in criminal law, which means that the legal person is prohibited from engagement in certain activities, or he is obliged to close a certain division (Paragraph 1 of Article 52 of the Criminal Code of the Republic of Lithuania (hereinafter referred to as the CC); however,

in criminal law, the fine and restriction of activity of the legal person are regarded as the main punishments, while only one punishment may be imposed for one criminal deed (Paragraph 3 of Article 43 of the CC), meanwhile, both a fine and the abolishment of the validity of the licence are established for the corresponding violations of the requirements of the Law. Taking account of the content and nature of these sanctions, it is doubtful whether the abolishment of the validity of the licence may be regarded as an additional sanction with regard to the fine and whether establishment of such two sanctions does not violate the constitutional principle *non bis in idem*.

2. The petition (No. 1B-23/2006) of the Supreme Administrative Court of Lithuania, a petitioner, requesting an investigation into whether Paragraph 17 (wording of 9 March 2004) of Article 34 of the Law, and Item 51.5 of the Rules as approved by government resolution No. 618 of 20 May 2004, to the extent that, according to the petitioner, it does not provide for the possibility of not abolishing the validity of the licence to engage in the wholesale or retail trade in alcoholic products, after account is taken of the nature of the violation of law, the circumstances mitigating the liability and other significant circumstances, are not in conflict with the constitutional principles of justice and a state under the rule of law, as well as whether Paragraph 17 (wording of 9 March 2004) of Article 34 of the Law, and Items 51.5 and 28.5 of the Rules as approved by government resolution No. 618 of 20 May 2004 are not in conflict with Paragraph 5 of Article 31 of the Constitution, is based on the fact that, in the opinion of the petitioner, the impugned legal regulation does not allow invoking the principle of reasonableness: the validity of the licence to engage in the wholesale or retail trade in alcoholic products must be abolished and a new licence is not issued for 5 years from the day of the abolishment of the validity of the licence, while disregarding the circumstances under which it was committed, circumstances mitigating the liability and other circumstances which are significant for the case; however, this economic sanction may be obviously disproportionate to the committed violation of law and, thus, unfair particularly because of the fact that another sanction—a fine—has already been imposed for the same violation of law.

3. The petition (No. 1B-30/2006) of the Supreme Administrative Court of Lithuania, a petitioner, requesting an investigation into whether Paragraph 17 (wordings of 9 March 2004 and 25 April 2006) of Article 34 of the Law, and Items 28.5 and 51.5 of the Rules as approved by government resolution No. 618 of 20 May 2004 are not in conflict with Paragraph 1 of Article 109 of the Constitution, and with the constitutional principles of justice and a state under the rule of law is based on the following arguments.

3.1. Neither Paragraph 17 (wording of 9 March 2004) of Article 34 of the Law, nor other places of the Law include any provisions, under which the courts, while considering cases on abolishment of the validity of the licence to engage in the retail trade in alcohol beverages, due to which a new licence is not issued for 5 years from the day of the abolishment of the validity of the

licence, could impose upon the violators a smaller sanction than that which is enshrined in Paragraph 17 (wording of 9 March 2004) of Article 34 of the Law. Due to the legal consequences of the abolishment of the validity of the licence, namely due to the fact that a new licence is not issued for 5 years from the day of the abolishment of the validity of the licence, as well as because of the fact that this sanction must be imposed upon all the economic subjects which committed the corresponding violations of law disregarding any circumstances, including circumstances mitigating the liability (due to which such sanctions would be obviously too strict for the violator of law, as disproportionate (inadequate) with the committed violation of law and, thus, not fair), this sanction should be regarded as strict (for example, under Article 52 of the CC, such punishment as the restriction of the activity of the legal person—the prohibition for a legal person against engaging in certain activity or the obligation to close a certain division—is imposed from 1 to 5 years). The prohibition on individualising the sanction (penalty) established in Paragraph 17 (wording of 9 March 2004) of Article 34 of the Law does not comply with the constitutional principles of justice and a state under the rule of law and restricts the powers of the court—restricts the exceptional empowerments of the court to administer justice which are enshrined in Paragraph 1 of Article 109 of the Constitution.

3.2. Paragraph 17 (wording of 25 March 2006) of Article 34 of the Law mitigated the liability of the enterprises which have the licences to engage in the retail trade in alcohol beverages and which do not follow the requirements of the Law: this paragraph established, *inter alia,* that "for enterprises, having licences to engage in the retail trade in alcoholic products which do not comply with the requirements of Items 2, 4, 8 and/or 9 of Paragraph 1 and Items 1, 2, 4 and 7 of Paragraph 2 of Article 17 of this Law, the validity of the licences to engage in the retail trade in alcoholic products in the place of trade where the violation was established shall be abolished and a new licence shall not be issued for one year from the day of the abolishment of the validity of the licence". However, it is not allowed to individualise these sanctions (penalties) as well.

3.3. Items 28.5 and 51.5 of the Rules as approved by government resolution No. 618 of 20 May 2004 virtually enshrine the same legal regulation as it is done in Paragraph 17 of Article 34 of the Law—it does not permit individualising the corresponding sanction (penalty).

4. The petition (No. 1B-51/2006) of the Šiauliai Regional Administrative Court, a petitioner, requesting an investigation into whether Paragraph 8 of Article 18 of the Law is not in conflict with Articles 29 and 46 of the Constitution, and with the constitutional principles of a state under the rule of law and the protection of legitimate expectations is based on the following arguments.

4.1. Under Paragraph 8 of Article 18 of the Law, "municipal councils shall have the right to limit or prohibit the trade in alcoholic beverages on official holidays and mass event days". Grounding its position that this provision is in conflict with Article 46 of the Constitution, the

Šiauliai Regional Administrative Court, a petitioner, refers to the provision of the official constitutional doctrine which is formulated in the Constitutional Court jurisprudence that the limitations on freedom of the economic activity, which is a constitutional freedom, must be established only by law, however, under Paragraph 8 of Article 18 of the Law, it is permitted to limit freedom of the economic activity not exclusively by law: municipal councils are delegated to do that at their discretion (on official holidays and mass event days). In such way, one restricts the right of the enterprises which work in the territory of the corresponding municipalities and which engage in trading in alcoholic beverages to freely engage in economic commercial activity and, thus, unequal conditions for competition are created in comparison with those created for the enterprises which engage in the same activity in the territories of the neighbouring municipalities, therefore, the constitutional guarantee of the protection of fair competition is violated. In addition, while stipulating that the municipal councils may at their discretion limit or prohibit trading in alcoholic beverages on official holidays and mass event days, the equality of rights of the economic subjects which trade in alcoholic beverages in the territories of different municipalities is violated, thus, Article 29 of the Constitution is violated.

4.2. On the other hand, Paragraph 8 of Article 18 of the Law does not establish in which places and how long trading in alcohol beverages may be limited or prohibited. Thus, during any mass event, despite its duration and extent "in respect of the territory of the municipality", the municipal council may prohibit or limit the trade in alcoholic beverages in all the territory of that municipality. Thus, in the opinion of the Šiauliai Regional Administrative Court, a petitioner, violates the constitutional principles of a state under the rule of law and the protection of legitimate expectations.

4.3. In general, in the opinion of the Šiauliai Regional Administrative Court, a petitioner, the "additional" legal regulation (in addition to the other one established in other paragraphs of this article) of the limitation and/or prohibition on the trade in alcoholic beverages which includes the territory of only one of the municipalities is hardly necessary, moreover that neither the Law, nor the Code of Administrative Violations of Law of the Republic of Lithuania (hereinafter also referred to as the CAVL) does not establish the procedure for application of liability for such violations of law.

5. The petition (No. 1B-40/2007) of the Vilnius Regional Administrative Court, a petitioner, requesting an investigation into whether Item 51.6 of the Rules as approved by government resolution No. 618 of 20 May 2004 is not in conflict with Paragraph 5 of Article 31, Article 46 and Paragraph 1 of Article 109 of the Constitution, with the constitutional principles of justice and a state under the rule of law and with Paragraph 17 of Article 34 of the Law is based on the following arguments.

5.1. Paragraphs 17 and 18 of Article 34 of the Law establish the cases when the validity of the licences issued to the enterprises is abolished, and Paragraph 6 of Article 16 of the Law establishes the cases when the licences are not issued (for a certain period of time or in general) to newly established enterprises. Item 51 of the Rules also establishes the cases when the validity of the licences is abolished, while Item 28—when the licences are not issued to newly established enterprises and to the enterprises the validity of the licences of which was abolished. Thus, the same relations are regulated by means of laws and substatutory legal acts. However, Item 51.6 of the Rules, under which the validity of the licence is abolished if the holder of the licence does not follow the requirements established in any of Items 33, 34, 37, 38, 39, 40, 41 and 42 of the Rules, establishes such cases of abolishment of the validity of the licences which are not established in the Law; it is doubtful whether due to the said fact Item 51.6 of the Rules is not in conflict with Paragraph 17 of Article 34 of the Law, and with the constitutional principle of a state under the rule of law. In addition, in the opinion of the Vilnius Regional Administrative Court, a petitioner, the fact that the freedom (in the considered case—the possibility of engaging in the wholesale in alcoholic products) of the economic activity of a person is limited by means of a legal act of lower legal force than a law is in conflict with Article 46 of the Constitution.

5.2. The requirement to abolish the validity of the licence which is enshrined in Item 51.6 of the Rules is imperative, this sanction must be applied while disregarding the circumstances and extent of the commission of the violation of law, circumstances mitigating the liability and other circumstances which are significant for the case. According to the Vilnius Regional Administrative Court, a petitioner, this sanction (which may be imposed also for far more serious violations of law (Item 51.5 of the Rules)) virtually deprives the legal person of an opportunity to further engage in the commercial activity, and the court may not even assess the nature, circumstances, seriousness and extent of the commission of the violation of law, as well as circumstances mitigating the liability and other circumstances which are significant for the case. Such a sanction does not permit a proper individualisation and differentiation of the liability; when equally applied to anyone, it may be disproportionate to the committed violation of law. Thus, such legal regulation, in the opinion of the petitioner, is in conflict with Paragraph 1 of Article 109 of the Constitution, it restricts the powers and exceptional empowerments of the court to administer justice and creates preconditions for violating the constitutional right of a person to a fair trial.

5.3. The principle *non bis in idem* which is enshrined in Paragraph 5 of Article 31 of the Constitution prohibits punishing a second time for the same violation of law. The abolishment of the validity of the licence which is imposed under Item 51 of the Rules, and the sanction which is imposed under Article 173^{12} of the CAVL are economic sanctions—measures of repressive nature—which are imposed for violations of law and may give rise to negative consequences with regard to

property, thus, when imposing them, one must follow the constitutional principle *non bis in idem*.

Because of the fact that at different time, different institutions (the court and the State Tobacco and Alcohol Control Service) impose two sanctions established for the corresponding violations of law, namely, a fine and the abolishment of the validity of the licence, it is doubtful whether it is possible to consider the abolishment of the validity of the licence as an additional sanction (punishment) in the aspect of the fine and whether the establishment of such two sanctions does not violate the constitutional principle *non bis in idem*.

The abolishment of the validity of the licence to engage in certain activity (in the considered case—in wholesale in alcoholic products) is a sanction, which is similar to the punishment of a limitation on the activity of the legal person in criminal law, however, in criminal law, a fine and a limitation on the activity of the legal person are the main punishments which are imposed upon legal persons for a criminal deed (Article 43 of the CC), and only one main punishment may be imposed for the same criminal deed (Paragraph 3 of Article 43 of the CC). Meanwhile, in the event of violation of the Rules, one must impose a fine (under the CAVL) and abolish the validity of the licence (under the Rules).

III

In the course of the preparation of the case for the Constitutional Court's hearing, written explanations from the representatives of the Seimas, the party concerned, who were Seimas member V. Karbauskis (representing the Seimas, the party concerned, in the part of the case subsequent to petitions No. 1B-35/2005, No. 1B-23/2006 and No. 1B-30/2006 of the Supreme Administrative Court of Lithuania, a petitioner) and L. Schulte-Ebbert, Head of the European Union and International Law Unit of the Legal Department of the Office of the Seimas (representing the Seimas, the party concerned, in the part of the case subsequent to petitions No. 1B-35/2005, No. 1B-23/2006 and No. 1B-30/2006 of the Supreme Administrative Court of Lithuania, a petitioner), the representatives of the Government, the party concerned, who were N. Pažūsienė (representing the Government, the party concerned, in the part of the case subsequent to petitions No. 1B-23/2006 and No. 1B-30/2006 of the Vilnius Regional Administrative Court, a petitioner), B. Janutėnienė (representing the Government, the party concerned, in the part of the case subsequent to petitions No. 1B-35/2005, No. 1B-23/2006 and No. 1B-30/2006 of the Supreme Administrative Court of Lithuania, a petitioner, and subsequent to petition No. 1B-40/2007 of the Vilnius Regional Administrative Court) and J. G. Petrusevičiūtė (representing the Government, the party concerned, in the part of the case subsequent to petition No. 1B-35/2005 of the Supreme Administrative Court of Lithuania, a petitioner), were received, in which it is stated that the impugned legal regulation is not in conflict with the corresponding legal regulation of higher legal force, *inter alia,* with the Constitution.

1. The position of V. Karbauskis and L. Schulte-Ebbert, the representatives of the Seimas, the party concerned, regarding petitions No. 1B-35/2005, No. 1B-23/2006 and No. 1B-30/2006 of the Supreme Administrative Court of Lithuania, a petitioner, is grounded on the following arguments.

1.1. Almost all the activity which is related to alcoholic products is licensed, and there is bigger interference by the state into the activity of the economic subjects—participants of the corresponding relations. When account is taken of the nature and degree of the danger of alcoholic products to society, the violations specified in Paragraph 17 (wordings of 9 March 2004 and 25 April 2006) of Article 34 of the Law are essential and significant, they may create negative consequences for the health of the human being and economic interests of the state, thus, persons should be strictly punished for such violations.

1.2. The constitutional principle *non bis in idem,* which prohibits punishing a person a second time for the same violation of law, does not prohibit the application of other kinds of liability to him, the main purpose of which is not punishing. It is obvious from the formula of Paragraph 17 (wordings of 9 March 2004 and 25 April 2006) of Article 34 of the Law that by establishing the economic sanctions in it, one seeks two objectives: (1) by punishing the economic subject by imposing a fine, one first of all seeks to liquidate its unlawfully gained benefit and, second, to compensate the interests of the state for the damage made to its economy; (2) by abolishing the validity of the licence, one seeks not to permit the economic subject, for some time in the future, to commit the violations for which it was punished by the fine. Thus, these economic sanctions differ according to their purpose: the fine is a repressive (punitive) sanction, while the abolishment of the validity of the licence is a preventive measure. In the opinion of V. Karbauskis and L. Schulte-Ebbert, one may not reach the objectives of the law by applying only one of these measures or by individualising not only the established repressive sanction—a fine—but also the preventive measure—the abolishment of the validity of the licence—because then it would be allowed not to apply the latter one.

1.3. Under Article 22 of the CAVL, one may impose the deprivation of a special right (i.e. an administrative penalty which is similar to the abolishment of the validity of the licence) both as the main and as an additional penalty. While assessing Article 34 (wordings of 9 March 2004 and 25 April 2006) of the Law in a systemic manner, it is obvious that the abolishment of the validity of the licence is not and may not be an independent measure, as only the abolishment of the validity of the licence, without imposition of a fine at the same time, is not established for any violation of the prohibition established in the Law. The abolishment of the validity of the licence, as a preventive measure, does not have an independent content, but is grounded on the proven legal fact—the decision to impose a fine which has come into effect. The provision of Paragraph 17 (wordings of 9

March 2004 and 25 April 2006) of Article 34 of the Law regarding the abolishment of the validity of the licence is imperative, but not absolute, as it is applied only for certain deeds provided for in the Law which are recognised by the legislature as especially dangerous for the health of the human being and only when the decision to impose a fine has become effective; in addition, upon abolishing the validity of the licence, after a certain period of time (5 or 1 year), one may, under the procedure established by legal acts, apply regarding the issuing of a new licence.

2. The position of N. Pažūsienė, B. Janutėnienė and J. G. Petrusevičiūtė, the representatives of the Government, the party concerned, regarding petitions No. 1B-35/2005, No. 1B-23/2006 and No. 1B-30/2006 of the Supreme Administrative Court of Lithuania, a petitioner, is grounded on the following arguments.

2.1. The sanction—the abolishment of the validity of the licence and non-issuance of a new licence for 5 or 1 year from the day of the abolishment of the validity of the licence—established in Paragraph 17 of Article 34 (wordings of 9 March 2004 and 25 April 2006) of the Law is imposed upon the enterprises which committed “very gross” violations of the Law which are usually related to the illegal acquisition and realisation of alcoholic products. By such violations of law one violates the interest of society: one does not pay taxes to the state, one does not contribute to the liquidation of the harmful consequences which are caused by the use of alcohol, the products which are of unknown origin and unsafe are sold to the consumers, thus, a danger may arise for the health and life of the human beings, moreover, that is done knowingly. Therefore, if due to the abolishment of the validity of the licence the alcohol business of the enterprise failed, it should not be regarded as a violation of the principles of reasonableness, proportionality and justice.

Under Paragraph 1 of Article 29 of the Constitution, all persons shall be equal before the law, the court, and other state institutions and officials. Thus, one should also impose the same economic sanction on the enterprises which violated the same requirement of the law. The possibility of applying the provisions of the law in a varied manner to the enterprises which committed the same violation differently would create preconditions for the prospering of corruption.

Upon assessing the fact that Paragraph 17 (wordings of 9 March 2004 and 25 April 2006) of Article 34 of the Law clearly indicates the violations of law, for which the same economic sanction—the abolishment of the validity of the licence—is imposed upon all the enterprises as well as taking account of the moral and material damage which, due to these violations of law, is experienced by society and the state, the abolishment of the validity of the licences is a fair measure, which is not too strict. In the explanations of the representatives of the Government, the party concerned, one pays attention to the fact that the exceptional empowerments of the court to administer justice which are established in the Constitution may be implemented by following

Article 41 of the Law which provides for the possibility of appealing against the economic sanctions imposed upon the economic subject in court.

2.2. According to the representatives of the Government, the party concerned, the provisions of the impugned items of the Rules as approved by government resolution No. 618 of 20 May 2004 are identical to the provisions of Paragraph 17 of Article 34 of the Law discussed herein, thus, taking account of the presented assessment of the corresponding provisions of the Law, there are no grounds to state that the impugned provisions of Items 28.5 and 51.5 of the Rules are in conflict with the Constitution.

2.3. In the opinion of the representatives of the Government, the party concerned, with reference, *inter alia,* to the provisions of the official constitutional doctrine formulated in the Constitutional Court's ruling of 3 November 2005 and the provisions of the CAVL (Article 21 whereof enumerates the kinds of the administrative penalties, and Article 22 establishes (differently than in the CC) that the deprivation of the special right may be imposed both as the main and as an additional administrative penalty), the economic sanctions which are established in Article 34 of the Law should be compared to the punishments for administrative violations of law: the fine which is established in Paragraph 2 of this article should be regarded as the main penalty, and the abolishment of the validity of the licence which is established in Paragraph 17—as an additional penalty. Both of these economic sanctions are established in the same legal act, thus, the fact that one institution imposes the fine, while another institution abolishes the validity of the licence (it is inevitable, as only the institution which issued the licence has the powers to abolish the validity of the licence), as well as the fact that these sanctions are applied at different time, should not be regarded as a second-time punishment for the same violation of law, because the assigning of certain functions to the institutions may not change the essence of the sanctions, nor to make them as main or additional ones. In addition, under Paragraph 1 of Article 4 of the Law, the alcoholic products are categorised as special products, and a particular treatment of state regulation is applied to the activity which is related to them; upon violation of the said treatment, the interests of society are injured, thus, a mere fine is not enough for such violations of law; for them one should impose also an additional punishment—the abolishment of the validity of the licence.

3. The position of N. Pažūsienė and B. Janutėnienė, the representatives of the Government, the party concerned, regarding petition No. 1B-40/2007 of the Vilnius Regional Administrative Court, a petitioner, is based on the following arguments.

3.1. The Rules as approved by government resolution No. 618 of 20 May 2004 are prepared by implementing Paragraph 6 (wording of 9 March 2004) of Article 16 of the Law, whereby the Government is commissioned to establish the Rules of Licensing the Wholesale and Retail Trade in Alcoholic Products. When approving the Rules, the Government followed not only Paragraphs 17

and 18 of Article 34 (wording of 9 March 2004) of the Law, but also the provisions of Paragraph 1 of Article 16 and Paragraphs 5-11 of Article 17, and Article 2.78 of the Civil Code of the Republic of Lithuania (hereinafter also referred to as the CC) which establishes the requirements for the rules of licensing.

Under Item 9 of Paragraph 2 of Article 2.78 of the CC, the rules of licensing shall specify the conditions of the activity which is licensed, including the rights and duties of the holder of the licence, and under Item 11 of the same paragraph, the rules of licensing shall specify the cases and procedure of the suspension and abolishment of the validity of the licence. Following Item 9 of Paragraph 2 of Article 2.78 of the CC, the provisions of Paragraph 1 of Article 16 and Paragraphs 5-11 of Article 17 of the Law are transferred to Items 33, 34 and 37-42 of the Rules, while with reference to Item 11 of Paragraph 2 of Article 2.78 of the CC, for these violations of the items of the Rules, Item 51.6 thereof establishes the abolishment of the validity of the licence. Thus, Item 51.6 of the Rules, which establishes additional cases of the abolishment of the validity of the licence, implements the provisions of the CC and the Law and is not in conflict with Paragraphs 17 and 18 of Article 34 of the Law.

3.2. The abolishment of the validity of the licence which is established in Item 51.6 of the Rules is not a too strict economic sanction and is not in conflict with the constitutional principles of a state under the rule of law, of justice and proportionality, as by this sanction one seeks to ensure the control and to prevent from unlawful acquisition, storing and realisation of alcoholic products. If the requirements established in the items of the Rules which are specified in Item 51.6 of the Rules are not followed, the interests of society are violated. In a state under the rule of law, the legislature has not only the right, but also the duty to limit or even prohibit, by means of laws, the deeds which essentially harm the interests of persons, society or the state, or due to which there is a threat of the occurrence of such harm. Freedom of economic activity of a person must be harmonised with the interests of society. Item 51.6 of the Rules precisely specifies the concrete violations, for commission of which the same economic sanction is imposed upon all the enterprises—the abolishment of the validity of the licence; in addition, the persons must know the conditions of the licensed activity and the fact, what economic sanctions are imposed for the violations thereof; the persons violate these conditions not by coincidence, but consciously.

3.3. The representatives of the Government, the party concerned, refer to the provision of the official constitutional doctrine which is already formulated in the jurisprudence of the Constitutional Court that freedom of economic activity is not absolute, the person makes use of it only by following certain obligatory requirements and limitations; freedom of economic activity may be limited when it is necessary to protect the security of the state or the community, public order, people’s health or morals and other values which are enshrined in the Constitution. In the

opinion of the representatives of the Government, the party concerned, Item 51.6 of the Rules is not in conflict with Article 46 of the Constitution.

3.4. While grounding the position that Item 51.6 of the Rules is not in conflict with Paragraph 5 of Article 31 of the Constitution, one bases himself on the provisions of the official constitutional doctrine which is formulated in the jurisprudence of the Constitutional Court whereby the principle *non bis in idem* does not deny a possibility of applying more than one sanction of the same kind to a person for the same violation. It is also emphasised that the Supreme Administrative Court of Lithuania has more than once specified in its rulings (administrative cases A^{15}-1056-04, A^{1}-930-05, A^{15}-39-05, A^{2}-749-06, etc.) that the economic sanctions for the violations of the Republic of Lithuania's Law on Tobacco Control and the Law on Alcohol Control should be related to administrative liability and, according to their nature, compared to penalties for administrative violations of law. In the opinion of the representatives of the Government, the party concerned, the economic sanction—the abolishment of the validity of the licence—may be regarded as an additional sanction.

3.5. While grounding the position that Item 51.6 of the Rules is not in conflict with Paragraph 1 of Article 109 of the Constitution, it is specified that one should also impose the same economic sanction upon the enterprises which violated the same requirement of the law. Otherwise, one would abolish the validity of the licence for a certain enterprise, while only a fine would be imposed for another enterprise for the same violation. In addition, the possibility of applying the provisions of the Rules in a varied manner to the enterprises which committed the same violation would create preconditions for the prospering of corruption. In the opinion of the representatives of the Government, the party concerned, the exceptional empowerments of the court to administer justice which are established in the Constitution may be implemented by following Item 46.3 of the Rules which provides for the possibility for the economic subject, under the procedure established by law, to lodge complaints against decisions of the institutions, which issue the licences, regarding the abolishment of the validity of the licences.

IV

1. In the course of preparation of the case for judicial consideration written explanations from V. Navickas, Minister of Economy of the Republic of Lithuania, A. Kazlauskas (4 letters), Secretary of the Ministry of Justice of the Republic of Lithuania, and Č. Balsys, Director of the State Tobacco and Alcohol Control Service under the Government of the Republic of Lithuania, were received.

2. It needs to be mentioned that in the written explanations (regarding petitions No. 1B-35/2005, No. 1B-23/2006, No. 1B-30/2006 and No. 1B-40/2007) of A. Kazlauskas, Secretary of the Ministry of Justice of the Republic of Lithuania, differently than in the written explanations of

Seimas member V. Karbauskis and L. Schulte-Ebbert, the representatives of the Seimas, the party concerned, and N. Pažūsienė, B. Janutėnienė and J. G. Petrusevičiūtė, the representatives of the Government, the party concerned, it is stated that there are doubts regarding the compliance of the impugned provisions of the Law and the Rules with the Constitution.

V

1. At the Constitutional Court's hearing, the representative of the Seimas, the party concerned, L. Schulte-Ebbert virtually reiterated the arguments set forth in her written explanations as well as presented additional explanations.

2. At the Constitutional Court's hearing, the representatives of the Government, the party concerned, N. Pažūsienė and B. Janutėnienė virtually reiterated the arguments set forth in their written explanations as well as presented additional explanations.

3. Seimas member Saulius Lapėnas (appointed to represent the Seimas, the party concerned, in the part of the case subsequent to petition No. 1B-51/2006 of the Šiauliai Regional Administrative Court, a petitioner), who was appointed as the representative of the Seimas, the party concerned, by the Ordinance of the Speaker of the Seimas (No. 120) "On the Powers to Represent the Seimas at the Constitutional Court" of 5 December 2006 did not present the Constitutional Court any written explanations (even though he was requested to do so) and, without giving any reason, did not appear at the Constitutional Court's judicial hearing.

The Constitutional Court

holds that:

I

1. The Supreme Administrative Court of Lithuania, a petitioner, requests an investigation into:

– whether Paragraph 17 (wording of 9 March 2004) of Article 34 of the Law, and Item 51.5 of the Rules as approved by government resolution No. 618 of 20 May 2004, to the extent that, according to the petitioner, it does not provide for the possibility, taking account of the nature of the violation of law, as well as circumstances mitigating the liability and other significant circumstances, not to abolish the validity of the licence are not in conflict with the constitutional principles of justice and a state under the rule of law, as well as whether Paragraph 17 (wording of 9 March 2004) of Article 34 of the Law, and Items 51.5 and 28.5 of the Rules as approved by government resolution No. 618 of 20 May 2004 are not in conflict with Paragraph 5 of Article 31 of the Constitution (petition No. 1B-35/2005);

– whether Paragraph 17 (wording of 9 March 2004) of Article 34 of the Law, and Item 51.5 of the Rules as approved by government resolution No. 618 of 20 May 2004, to the extent that,

according to the petitioner, it does not provide for the possibility of not abolishing the validity of the licence to engage in the wholesale or retail trade in alcoholic products, after account is taken of the nature of the violation of law, the circumstances mitigating the liability and other significant circumstances, are not in conflict with the constitutional principles of justice and a state under the rule of law, as well as whether Paragraph 17 (wording of 9 March 2004) of Article 34 of the Law, and Items 51.5 and 28.5 of the Rules as approved by government resolution No. 618 of 20 May 2004 are not in conflict with Paragraph 5 of Article 31 of the Constitution (petition No. 1B-23/2006);

– whether Paragraph 17 (wordings of 9 March 2004 and 25 April 2006) of Article 34 of the Law, and Items 28.5 and 51.5 of the Rules as approved by government resolution No. 618 of 20 May 2004 are not in conflict with Paragraph 1 of Article 109 of the Constitution and with the constitutional principles of justice and a state under the rule of law (petition No. 1B-30/2006).

2. The Šiauliai Regional Administrative Court, a petitioner, requests an investigation into whether Paragraph 8 of Article 18 of the Law is not in conflict with Articles 29 and 46 of the Constitution, and with the constitutional principles of a state under the rule of law and the protection of legitimate expectations (petition No. 1B-51/2006).

3. The Vilnius Regional Administrative Court, a petitioner, requests an investigation into whether Item 51.6 of the Rules as approved by government resolution No. 618 of 20 May 2004 is not in conflict with Paragraph 5 of Article 31, Article 46 and Paragraph 1 of Article 109 of the Constitution, with the constitutional principles of justice and a state under the rule of law and with Paragraph 17 of Article 34 of the Law (petition No. 1B-40/2007).

4. In the operative parts of its rulings, whereby it applied to the Constitutional Court (petitions No. 1B-35/2005, No. 1B-23/2006 and No. 1B-30/2006), the Supreme Administrative Court of Lithuania, a petitioner, does not specify the wording of the provisions of Items 28.5 and 51.5 of the Rules as approved by government resolution No. 618 of 20 May 2004, the compliance of which with the Constitution it impugns, however, it is obvious from its petitions, that the petitioner impugns the provisions of Items 28.5 and 51.5 of the Rules as approved by government resolution No. 618 of 20 May 2004 set forth in their wording of 20 May 2004.

5. In the operative part of the rulings, whereby it applied to the Constitutional Court (petition No. 1B-51/2006), the Šiauliai Regional Administrative Court, a petitioner, does not specify the wording of the provisions of Paragraph 8 of Article 18 of the Law, the compliance of which with the Constitution it impugns, however, it is obvious from its petition and the material of the administrative case in which the ruling regarding the application to the Constitutional Court was adopted that the petitioner impugns the provisions of the Law which are set forth in their wording of 9 March 2004.

6. In the operative part of the rulings, whereby it applied to the Constitutional Court (petition No. 1B-40/2007), the Vilnius Regional Administrative Court, a petitioner, does not specify the wording of the provisions of Item 51.6 of the Rules, the compliance of which with the Paragraph 17 of Article 34 of the Law it impugns, as well as the wording in which the said paragraph of the article of the Law is set forth, however, it is obvious from its petition and the material of the administrative case in which the ruling regarding the application to the Constitutional Court was adopted that the impugned provisions of Item 51.6 of the Rules are set forth in their wording of 20 May 2004, while Paragraph 17 of Article 34 of the Law—in its wordings of 9 March 2004 and 25 April 2006.

II

On the compliance of Paragraph 17 (wordings of 9 March 2004 and 25 April 2006) of Article 34 of the Law on Alcohol Control with Paragraph 5 of Article 31 and Paragraph 1 of Article 109 of the Constitution, and with the constitutional principles of a state under the rule of law and of justice.

1. In this constitutional justice case, one impugns, *inter alia,* whether the legal regulation established in Paragraph 17 (wordings of 9 March 2004 and 25 April 2006) of Article 34 of the Law was not in conflict with the Constitution.

2. On 18 April 1995, the Seimas adopted the Law on Alcohol Control which came into force on 26 May 1995. This law was designed to regulate the relations which are linked to the production, domestic trade, storing, import, export and consumption of alcoholic products, food products which include alcohol additives and other products which include ethanol, and to establish the grounds of the state alcohol control in the Republic of Lithuania (Paragraph 2 of Article 2). The Law has been amended and/or supplemented more than once.

3. On 9 March 2004, the Seimas adopted the Republic of Lithuania's Law on Amending the Law on Alcohol Control which came into force on 1 May 2004. Article 1 of the Law on Amending the Law on Alcohol Control amended the Law on Alcohol Control (wording of 18 April 1995) and set it forth in its new wording.

4. Article 34 titled "Application of economic sanctions for violations of the Law" (wording of 9 March 2004) of the Law, *inter alia,* prescribed:

"1. The Service, the National Consumer Rights Protection Board, the State Food and Veterinary Service, the State Tax Inspectorate under the Ministry of Finance <…>, local State tax inspectorates, institution authorised by the Government to issue licences for the import and export of wine and ethyl alcohol of agricultural origin and the institution authorised by the Government <…>, which must be informed about the import of alcoholic products (except for wine products and ethyl alcohol of agricultural origin), municipal institutions and the police shall have the right to

impose, within the scope of their competence, fines upon legal persons and branches of foreign legal persons for violations of this Law.

2. For the production and sale of alcoholic products which do not conform to the safety and quality requirements in force in the Republic of Lithuania, import and export of wine products and ethyl alcohol of agricultural origin, production, storing, transportation and sale of alcoholic products without possessing an appropriate licence for this activity, import of alcoholic products (except wine products and ethyl alcohol of agricultural origin) if the institution authorised by the Government <…> is not informed according to the procedure established by the Government <…> or the institution authorised by it, also for the failure to comply with the requirements of the sale, storing and transportation of alcoholic products set in Paragraphs 1, 2, 5–11 of Article 17 of this Law, legal persons and branches and representations of foreign legal persons shall be imposed a fine in the amount from one thousand to eighty thousand litas.

17. For enterprises, having licences to engage in wholesale or retail trade in alcoholic products which do not comply with the requirements of Items 1, 2, 4, 5, 8 and 9 of paragraph 1 and Items 1, 2, 4 and 7 of Paragraph 2 of Article 17 of this Law, the validity of the licences shall be abolished and new licences shall not be issued for five years from the day of the abolishment of the validity of the licences.

18. The validity of the licences shall be abolished and licences shall not be reissued to enterprises, if a judgment of conviction has become effective or a judgment or a decision of the court, a decision of the customs, the tax inspectorate, the police or the Service concerning the imposition of a punishment or penalty has become effective in respect of them or in respect of the heads of their administration or other employees (if they have acted on behalf of the enterprise or in its interests) for contraband of alcoholic products, unlawful storing, transportation or sale of alcoholic beverages without tax stamps and also for the sale, transportation or storing of counterfeit alcoholic products. <…>

21. Abolishment of the validity of the licences shall not relieve enterprises from the payment of fines established in Paragraphs 2, 3, 4, 5, and 6 of this Article, imposed upon the enterprises.”

5. Article 2 of the Republic of Lithuania’s Law on Amending and Supplementing Articles 17 and 34 of the Law on Alcohol Control which was adopted on 25 April 2006 and came into force on 13 May 2006, *inter alia,* amended:

– Paragraph 2 (wording of 9 March 2004) of Article 34 of the Law and it was prescribed: “For the production and sale of alcoholic products which do not conform to the safety and quality requirements in force in the Republic of Lithuania, import and export of wine products and ethyl alcohol of agricultural origin, production, storing, transportation and sale of alcoholic products without possessing an appropriate licence for this activity, import of alcoholic products (except

wine products and ethyl alcohol of agricultural origin) if the institution authorised by the Government <…> is not informed according to the procedure established by the Government <…> or the institution authorised by it, also for the failure to comply with the requirements of the sale, storing and transportation of alcoholic products set in Items 2–11 of Paragraph 1, Items 2–9 of Paragraph 2 and Paragraphs 5–11 of Article of this Law, legal persons and branches and representations of foreign legal persons shall be imposed a fine in the amount from one thousand to eighty thousand litas"; thus, the reference to Paragraphs 1, 2, 5–11 (violations thereof) of Article 17 of the Law which existed up to then was replaced by the reference to Items 2–11 of Paragraph 1, Items 2–9 of Paragraph 2 and Paragraphs 5–11 (violations thereof) of this article; it needs to be noted that Article 17 (wording of 9 March 2004) of the Law has also been amended and supplemented;

– Paragraph 17 (wording of 9 March 2004) of Article 34 of the Law and it was prescribed: "For enterprises, having licences to engage in wholesale in alcoholic products which do not comply with the requirements of Items 2, 4, 8 and/or 9 of Paragraph 1 and Items 2, 4 and/or 7 of Paragraph 2 of Article 17 of this Law, the validity of the licences shall be abolished and new licences shall not be issued for five years from the day of the abolishment of the validity of the licences. For enterprises, having licences to engage in retail trade in alcoholic products which do not comply with the requirements of Items 2, 4, 8 and/or 9 of Paragraph 1 and Items 2, 4 and/or 7 of Paragraph 2 of Article 17 of this Law, the validity of the licence to engage in retail trade in alcoholic beverages in the place where the violation was established shall be abolished and a new licence shall not be issued for one year from the day of the abolishment of the validity of the licence"; thus, the liability of the enterprises which have the licences to engage in wholesale in alcoholic products and which do not comply with the requirements of Items 2, 4, 8 and/or 9 of Paragraph 1 and Items 2, 4 and/or 7 of Paragraph 2 of Article 17 of the Law and the liability of the enterprises which have the licences to engage in retail trade in alcoholic products which do not comply with the requirements of Items 2, 4, 8 and/or 9 of Paragraph 1 and Items 2, 4 and/or 7 of Paragraph 2 of Article 17 of this Law was differentiated and it was stipulated that when the corresponding violations of law were committed, one had to adopt different decisions regarding the licences to engage in wholesale in alcoholic products and the licences to engage in retail trade in alcoholic beverages: one had to abolish the validity of the licences and not to issue new licences for five years from the day of the abolishment of the validity of the licence for the enterprises which held the licences to engage in wholesale in alcoholic products and which committed the corresponding violations of law, while for the enterprises which held the licences to engage in retail trade in alcoholic beverages and which committed the corresponding violations, the validity of the licence to engage in retail trade in alcoholic beverages in the place where the violation was established had to be abolished and one

had not to issue the new licence for one year from the day of the abolishment of the validity of the licence; in addition, the reference to Paragraphs 1, 2, 4, 5, 8 and 9 and Items 1, 2, 4 and 7 of Paragraph 2 (violations thereof) of Article 17 of the Law which existed up to then was replaced by the reference to Items 2, 4, 8 and/or 9 of Paragraph 1 and Items 2, 4 and/or 7 of Paragraph 2 (violations thereof) of this article; it needs to be noted that, as mentioned before, Article 17 (wording of 9 March 2004) of the Law has also been amended and supplemented.

6. The legal regulation established in Paragraph 17 (wordings of 9 March 2004 and 25 April 2006) of Article 34 of the Law should be construed in the context of other provisions *(inter alia,* the cited provisions of Article 34 thereof) of this law; one must, among other things, take account of Paragraphs 1 and 2 of Article 17 (wordings of 9 March 2004, 4 November 2004 and 25 April 2006) of the Law, to which the reference is made in the impugned Paragraph 17 (wordings of 9 March 2004 and 25 April 2006) of Article 34 of the Law, as well as of Article 16 (wording of 9 March 2004) of the Law.

7. Article 16 titled "Licences for wholesale and retail trade in alcoholic products" (wording of 9 March 2004) of the Law prescribed:

"1. Only enterprises holding licences to engage in wholesale trade in alcoholic products issued by the Service shall be allowed to engage in wholesale trade in the said products. Licences shall be issued for an unlimited period. Licences to engage in wholesale trade in alcoholic products must among other things have a listing of the alcoholic products permitted to be sold, and must indicate the groups of alcoholic beverages as well as the location of their trade and storage.

2. Enterprises holding licences to produce alcoholic products shall also have the right to engage in wholesale trade in the products they produce.

3. Only the enterprises holding licences to engage in retail trade in alcoholic beverages shall be permitted to engage in retail trade in alcoholic beverages. Licences shall be issued for an unlimited period by the executive institution of an appropriate municipality. Licences to engage in seasonal retail trade in beer and alcoholic beverages, whose ethyl alcohol concentration volume does not exceed 22 %, in resorts and other recreational and tourist areas designated by the municipal councils shall be issued for the resort, recreational and tourist season period set by the municipal councils. Onetime licences issued to retail establishments and catering establishments to engage in sale of alcoholic beverages, whose ethyl alcohol strength by volume is not over 13 %, at mass events, exhibitions and fairs, and also, to engage in the sale of all alcoholic beverages at exhibitions and fairs held in permanent buildings, shall be issued for no longer than the time of the event's duration.

4. The municipal council shall establish the procedure of licence issuance for retail trade in retail establishments and catering establishments and publish it in the mass media. The Service shall

control the issuance of licences in the municipalities.

5. The licences to engage in retail trade in alcoholic beverages must, *inter alia,* also have entries indicating the groups of alcoholic beverages whose sale shall be permitted, as well as the location of trade and storage of the alcoholic beverages.

6. The Government <…> shall set the regulations of licensing wholesale and retail trade in alcoholic products, based upon this Law, the Civil Code and the requirements of EU law. Newly founded enterprises shall be refused issuance of licences for a five-year period if their founders or administration heads had been the founders or administration heads of the enterprises the validity of whose licences was abolished based upon Paragraph 17 of Article 34 of this Law. Licenses shall not be issued to newly founded enterprises, if their founders or administration heads had been the administration heads or founders or other employees, listed in Paragraph 18 of Article 34 of this Law, of the enterprises the validity of whose licences were abolished according to Paragraph 18 of Article 34 of this Law."

8. Article 17 titled "Requirements of sale, storing and transportation of alcoholic products" (wording of 9 March 2004) of the Law, *inter alia,* prescribed:

"1. It shall be prohibited to sell in the Republic of Lithuania:

1) alcoholic products without possessing documents certifying the conformity of the products according to the procedure established by the Government <…> or an institution authorised by it;

2) alcoholic products not recorded on the licences for the production, import and sale thereof, and alcoholic products without holding at the place of their sale/storage a copy of mandatory legally valid documents of product acquisition or transportation;

3) alcoholic beverages (except for beer and naturally fermented cider of not more than 8.5 % ethyl alcohol strength by volume), which are not labelled with special marks—tax stamps—according to the procedure established by the Government <…>;

4) alcoholic beverages, which have been produced using ethyl alcohol of non-agricultural origin;

5) alcoholic products whose safety and/or quality indicators do not meet the requirements in force in the Republic of Lithuania;

6) alcoholic beverages, whose labelling does not meet the requirements in force in the Republic of Lithuania;

7) counterfeit alcoholic products;

8) home-brewed alcoholic beverages;

9) ethyl alcohol for natural persons, except for non-denatured ethyl alcohol of agricultural origin, sold in pharmacies to natural persons in accordance with the procedure established by the

Ministry of Health;

10) contraband alcoholic products;

11) alcoholic products without holding a licence issued according to the procedure established by the Government <…>.

2. Legal persons and branches and representations of foreign legal persons shall be prohibited from storing and transportation in the Republic of Lithuania:

1) alcoholic products without having documents certifying the conformity of the alcoholic products in accordance with the procedure established by the Government <…> or an institution authorised by it;

2) alcoholic products, which are not recorded on the licences for the production, import, sale thereof and alcoholic products without holding a copy of mandatory legally valid documents for the acquisition or transportation of these products at the sales outlet (at the place of storage or keeping) and/or during the transportation thereof;

3) alcoholic beverages (except for beer and naturally-fermented cider of not more than 8.5 % ethyl alcohol strength) not labelled with special marks—tax stamps—according to the procedure established by the Government <…>;

4) alcoholic beverages, which are produced using ethyl alcohol of non-agricultural origin;

5) alcoholic beverages, whose labelling does not meet the requirements in force in the Republic of Lithuania;

6) counterfeit alcoholic beverages;

7) home-brewed alcoholic beverages;

8) contraband alcoholic products;

9) alcoholic products without holding a licence issued in accordance with the procedure established by the Government <…> for alcohol product production, import and wholesale or retail trade, except for the cases set forth in Paragraph 3 of this Article.

3. The requirements of Item 9 of Paragraph 2 of this Article shall not apply to:

1) alcoholic beverages which are stored or transported by enterprises which use these beverages as food product raw materials, also legal persons and branches and representations of foreign legal persons, which have acquired alcoholic beverages for representational purposes in accordance with the procedure established by the Government <…> or an institution authorised by it;

2) dehydrated and denatured ethyl alcohol, which is used for the production of fuel or fuel compounds with ethyl alcohol which conform to technical regulations or standards, as well as ethyl alcohol which is stored and transported by enterprises which have the right to import ethyl alcohol and enterprises, institutions and organisations, which have permits issued according to the

procedure established by the Government <…> and are using ethyl alcohol in production, for technical, medical, veterinary needs or for scientific research operations;

3) raw materials stored and transported by enterprises which have the right to import raw materials as well as enterprises which use cider, grape, fruit and berry wine raw materials to produce vinegar;

4) alcoholic solutions stored and transported by enterprises which have the right to import alcoholic solutions, enterprises which use alcoholic solutions for production purposes as well as enterprises which engage in retail trade in alcoholic solutions bottled in disposable packaging of not more than 20 millilitres;

5) alcoholic products which are stored or transported by persons providing transport services and economic subjects of the states belonging to the European economic area, who are in possession of the mandatory legally valid documents of the acquisition or transportation of these products."

9. Paragraph 1 of Article 2 of the Republic of Lithuania's Law on Supplementing and Amending Articles 2, 17 and 18 of the Law on Alcohol Control, which was adopted on 4 November 2004 by the Seimas and which came into force on 20 November 2004, supplemented Paragraph 3 (wording of 9 March 2004) of Article 17 of the Law by Item 6 and it was prescribed that the requirements (that legal persons and branches and representations of foreign legal persons shall be prohibited from storing and transportation in the Republic of Lithuania alcoholic products without holding a licence issued in accordance with the procedure established by the Government <…> for alcohol product production, import and wholesale or retail trade, except for the cases set forth in Paragraph 3 of this Article) of Item 9 of Paragraph 2 of this article shall not be applied (among other things) also to "alcoholic beverages which are stored and transported by the managers of ships and owners (or users) of the aircrafts who supply the alcoholic beverages as reserve for their ships and aircrafts that transport passengers on international routes".

10. The Republic of Lithuania's Law on Amending and Supplementing Articles 17 and 34 of the Law on Alcohol Control, which was adopted by the Seimas on 25 April 2006 and which came into force on 13 May 2006, amended the following:

– by Paragraph 1 of Article 1 whereof, Item 2 of Paragraph 1 (wording of 9 March 2004) of Article 17 of the Law was amended and it was prescribed that, in the Republic of Lithuania, it is prohibited to sell "the alcoholic products, which are not recorded on the licences for the production, import, sale thereof and alcoholic products without holding the mandatory legally valid documents for the acquisition or transportation of these products" (as mentioned before, up to then, under this item, in the Republic of Lithuania it had been prohibited to sell "alcoholic products, which are not recorded on the licences for the production, import, sale thereof and alcoholic products without

holding a copy of mandatory legally valid documents for the acquisition or transportation of these products at the sales outlet (at the place of storage) and/or during the transportation thereof";

– by Paragraph 2 of Article 1 whereof, Paragraph 1 (wording of 9 March 2004) of Article 17 of the Law was supplemented with Item 12 and it was prescribed that, in the Republic of Lithuania, it is prohibited to sell "alcoholic products without holding a copy of mandatory legally valid documents for the acquisition or transportation of these products at the sales outlet (at the place of storage)";

– by Paragraph 3 of Article 1 whereof, Item 2 of Paragraph 2 (wording of 9 March 2004) of Article 17 of the Law was amended and it was prescribed that, in the Republic of Lithuania, legal persons and branches and representations of foreign legal persons shall be prohibited from storing and transporting "alcoholic products, which are not recorded on the licences for the production, import, sale thereof and alcoholic products without holding the mandatory legally valid documents for the acquisition or transportation of these products" (as mentioned before, up to then, under this item, in the Republic of Lithuania legal persons and branches and representations of foreign legal persons were prohibited from storing and transporting "alcoholic products, which are not recorded on the licences for the production, import, sale thereof and alcoholic products without holding a copy of mandatory legally valid documents for the acquisition or transportation of these products at the sales outlet (at the place of storage or keeping) and/or during the transportation thereof");

– by Paragraph 4 of Article 1 whereof, Item 2 of Paragraph 2 (wording of 9 March 2004) of Article 17 of the Law was supplemented with Item 10 and it was prescribed that, in the Republic of Lithuania, legal persons and branches and representations of foreign legal persons were prohibited from storing and transporting "alcoholic products without holding a copy of mandatory legally valid documents for the acquisition or transportation of these products at the sales outlet (at the place of storage) and/or during the transportation thereof".

11. Summing up, it should be held that:

– under Paragraph 17 (wording of 9 March 2004) of Article 34 of the Law, the validity of the licences to engage into the wholesale or retail trade in alcoholic products had to be abolished and no new licences had to be issued for five years from the day of the abolishment of the validity of the licences in case of violation of the following prohibitions: the prohibition on the sale, storing and transportation of alcoholic products without possessing documents certifying the conformity of the products according to the procedure established by the Government or an institution authorised by it (Item 1 (wording of 9 March 2004) of Paragraph 1 and Item 1 (wording of 9 March 2004) of Paragraph 2 of Article 17 of the Law); the prohibition on the sale, storing and transportation of alcoholic products, which are not recorded on the licences for the production, import, sale thereof and alcoholic products without holding a copy of mandatory legally valid documents for the

acquisition or transportation of these products at the sales outlet (at the place of storage or keeping) and/or during the transportation thereof (Item 2 (wording of 9 March 2004) of Paragraph 1 and Item 2 (wording of 9 March 2004) of Paragraph 2 of Article 17 of the Law); the prohibition on the sale, storing and transportation of alcohol beverages which have been produced using ethyl alcohol of non-agricultural origin (Item 4 (wording of 9 March 2004) of Paragraph 1 and Item 4 (wording of 9 March 2004) of Paragraph 2 of Article 17 of the Law); the prohibition on the sale of alcoholic products whose safety and/or quality indicators do not meet the requirements in force in the Republic of Lithuania (Item 5 (wording of 9 March 2004) of Paragraph 1 of Article 17 of the Law); the prohibition on the sale, storing and transportation of home-brewed alcoholic beverages (Item 8 (wording of 9 March 2004) of Paragraph 1 and Item 7 (wording of 9 March 2004) of Paragraph 2 of Article 17 of the Law); the prohibition on the sale of ethyl alcohol for natural persons, except for non-denatured ethyl alcohol of agricultural origin, sold in pharmacies to natural persons in accordance with the procedure established by the Ministry of Health (Item 9 (wording of 9 March 2004) of Paragraph 1 of Article 17 of the Law);

– under Paragraph 17 (wording of 25 April 2006) of Article 34 of the Law, differently than under Paragraph 17 (wording of 9 March 2004) of this article, the validity of the licence to engage in retail trade in alcoholic beverages, differently than the validity of the licence to engage in wholesale in alcoholic beverages, had to be abolished only in the place where the violation was established, and a new licence had to be not issued not for five, but for one year from the day of the abolishment of the validity of the licence; in addition, the validity of the licences to engage in the wholesale or retail trade in alcoholic beverages had to be abolished for absence of the mandatory legally valid documents for the acquisition or transportation of alcoholic products at the enterprise (Items 1 and 2 (wording of 25 April 2006) of Paragraph 1 of Article 17), and it had not to be abolished (while imposing only corresponding fines on the violator of law) after the following prohibitions were violated: the prohibition on the selling, storing and transportation of alcoholic products without possessing documents certifying the conformity of the alcoholic products according to the procedure established by the Government or an institution authorised by it (which was formerly established in Item 1 of Paragraph 1 and Item 1 (wording of 9 March 2004) of Paragraph 2 of Article 17 of the Law); the prohibition on selling the alcoholic products whose safety and/or quality indicators do not meet the requirements in force in the Republic of Lithuania (which was formerly established in Item 5 (wording of 9 March 2004) of Paragraph 1 of Article 17 of the Law); the prohibition on the selling, storing and transportation of alcoholic products without holding a copy of mandatory legally valid documents for the acquisition or transportation of these products at the sales outlet (at the place of storage) and/or during the transportation thereof (which was formerly established in Item 12 of Paragraph 1 and Item 10 (wording of 9 March 2004) of

Paragraph 2 of Article 17 of the Law).

12. The legal regulation established in the impugned Paragraph 17 (wording of 25 April 2006) of Article 34 of the Law, as well as in Article 16 (wording of 9 March 2004) and Article 17 (wording of 25 April 2006) of this Law, which were quoted in this Constitutional Court's ruling has been amended and/or supplemented by the Republic of Lithuania's Law on Amending and Supplementing Articles 2, 7, 11, 12, 16, 17, 18, 26, 29, 33 and 35 of the Law on Alcohol Control which was adopted by the Seimas on 21 June 2007 and which came into force on 1 August 2007. The Law on Amending and Supplementing Articles 2, 7, 11, 12, 16, 17, 18, 26, 29, 33 and 35 of the Law on Alcohol Control has amended the following:

– by Paragraph 8 of Article 11 whereof, Paragraph 17 (wording of 25 April 2006) of Article 34 of the Law was amended and it was prescribed: "for enterprises, having licences to produce alcoholic products or to engage in the wholesale in alcoholic products which do not comply with the requirements of Items 2, 4, 8 and/or 9 of Paragraph 1 and Items 2, 4 and 7 of Paragraph 2 of Article 17 of this Law, the validity of the licences shall be abolished and the new licences are not issued for five years from the day of the abolishment of the validity of the licence. For enterprises having the licence to engage in the retail trade in alcoholic products which do not comply with the requirements of Items 2, 4, 8 and/or 9 of Paragraph 1 and Items 2, 4 and 7 of Paragraph 2 of Article 17 of this Law, the validity of the licence to engage in the retail trade in alcoholic products in the place where the violation was established shall be abolished and a new licence is not issued for one year from the day of the abolishment of the validity of the licence"; when comparing the wordings of 21 June 2007 and 25 June 2006 of Paragraph 17 of Article 34 of the Law, it is obvious that for the violations of law specified in this paragraph, not only the licences to engage in wholesale in alcoholic products, but also the licences to produce alcoholic products have to be revoked and new licences have to be not issued for five years from the day of the abolishment of the validity of the licence;

– by Paragraph 1 of Article 5 whereof, Article 16 (wording of 9 March 2004) of the Law was supplemented with Paragraph 4 and it was prescribed: "The enterprises which wish to engage in retail trade in alcoholic beverages at the enterprises of trade and public catering which are arranged in multi-flat residential houses shall be issued the licences if these enterprises present under the procedure established by the Government <…> the consent of the majority (the persons who sign the consent may indicate the time of the trade in alcoholic beverages therein) of the assembly (board) of the community of the owners of the multi-flat residential house or, if the community is not established or the community administers more than one multi-flat residential house, of the owners of the premises of the residential house and the tenants of the non-privatised flats", and by Paragraph 2 of Article 5 whereof it was decided to consider former Paragraphs 4, 5

and 6 (wording of 9 March 2004) of Article 16 of the Law as Paragraphs 5, 6 and 7 accordingly;

– by Paragraph 3 of Article 5 whereof, Paragraph 7 (former Paragraph 6 (wording of 9 March 2004)) of Article 16 of the Law was amended and it was prescribed: “The Government <…>, referring to this Law, the Civil Code and the requirements of the European Union law, shall set the regulations of licensing wholesale and retail trade in alcoholic products. The enterprises shall be refused issuance of licences for a five-year period if their founders or administration heads had been the founders or administration heads of the enterprises the validity of whose licences to engage in the wholesale in alcoholic products was abolished based upon Paragraph 17 of Article 34 of this Law. Licenses to engage in wholesale or retail trade in alcoholic products shall not be issued to enterprises, if their founders or administration heads are or had been the administration heads or founders of the enterprises, in which the cases where established, when alcoholic products were sold, stored and/or transported without having the licence to engage in wholesale or retail trade in alcoholic products issued under the procedure established by the Government <…>. The enterprises shall be refused issuance of licences to engage in wholesale or retail trade in alcohol products, if their founders or administration heads had been the administration heads or founders or other employees, listed in Paragraph 18 of Article 34 of this Law, of the enterprises the validity of whose licences were abolished according to Paragraph 18 of Article 34 of this Law”; thus, the former legal regulation, under which the equal sanction of non-issuance of the licences was established for all the enterprises, the validity of whose licences to engage in the wholesale or retail trade in alcoholic products was abolished, save, to the certain extent, the enterprises the validity of whose licences to engage in the wholesale in alcoholic products was abolished;

– by Paragraphs 1 and 2 of Article 6 whereof, Items 1 and 3 (wording of 9 March 2004) of Paragraph 1 of Article 17 of the Law were amended and it was prescribed that, in the Republic of Lithuania, it shall be prohibited to sell “alcoholic products without possessing the documents certifying the conformity of the products issued according to the procedure established by the Government <…> or an institution authorised by it” (Item 1) and “alcoholic beverages (except for beer, beer cocktails with non-alcoholic beverages and naturally-fermented cider of not more than 8.5 % ethyl alcohol strength) which are not labelled with special marks—tax stamps—according to the procedure established by the Government <…>” (it has been mentioned that the former wordings of these items were correspondingly as follows: “alcoholic products without possessing documents certifying the conformity of the products according to the procedure established by the Government <…> or an institution authorised by it” and “alcoholic beverages (except for beer and naturally fermented cider of not more than 8.5 % ethyl alcohol strength by volume), which are not labelled with special marks—tax stamps—according to the procedure established by the Government <…>”);

– by Paragraphs 3 and 4 of Article 6 whereof amended Items 1 and 3 of Paragraph 2 of Article 17 of the Law, and it was prescribed that, in the Republic of Lithuania, legal persons and branches and representations of foreign legal persons shall be prohibited from storing and transporting “alcoholic products without having documents certifying the conformity of the alcoholic products issued in accordance with the procedure established by the Government <…> or an institution authorised by it” (Item 1) and “alcoholic beverages (except for beer, beer cocktails with non-alcoholic beverages and naturally-fermented cider of not more than 8.5 % ethyl alcohol strength) which are not labelled with special marks—tax stamps—according to the procedure established by the Government <…>” (it has been mentioned that the former wordings of these Items were correspondingly as follows: “alcoholic products without possessing documents certifying the conformity of the products according to the procedure established by the Government <…> or an institution authorised by it” and “alcoholic beverages (except for beer and naturally fermented cider of not more than 8.5 % ethyl alcohol strength by volume), which are not labelled with special marks—tax stamps—according to the procedure established by the Government <…>”);

– by Paragraphs 5 and 6 of Article 6 whereof, Items 2 and 5 (wording of 9 March 2004) of Paragraph 3 of Article 17 of the Law were amended and it was prescribed that the requirements of Item 9 of Paragraph 2 of this article (i.e. the prohibition in the Republic of Lithuania for the legal persons and branches and representations of foreign legal persons against storing and transporting alcoholic products without holding a licence issued in accordance with the procedure established by the Government <…> for alcohol product production, import and wholesale or retail trade, except for the cases set forth in Paragraph 3 of this article) shall not be applied to the “ethyl alcohol which is stored and transported by enterprises which have the right to import ethyl alcohol” (Item 2) and to the “alcoholic products which are stored or transported by persons providing transport services and economic subjects of the states belonging to the European economic area and of Turkey, who are in possession of the mandatory legally valid documents of the acquisition or transportation of these products” (Item 5) (it has been mentioned that the former wordings of these items were correspondingly as follows: “dehydrated and denatured ethyl alcohol, which is used for the production of fuel or fuel compounds with ethyl alcohol which conform to technical regulations or standards, as well as ethyl alcohol which is stored and transported by enterprises which have the right to import ethyl alcohol and enterprises, institutions and organisations, which have permits issued according to the procedure established by the Government <…> and are using ethyl alcohol in production, for technical, medical, veterinary needs or for scientific research operations” and “alcoholic products which are stored or transported by persons providing transport services and economic subjects of the states belonging to the European economic area, who are in possession of

the mandatory legally valid documents of the acquisition or transportation of these products");

– by Paragraph 7 of Article 6 whereof, Item 3 (wording of 4 November 2004) of Article 17 of the Law was supplemented with Item 7 and it was prescribed that the requirements of Item 9 of Paragraph 2 of this article (i.e. the prohibition for the legal persons and branches and representations of foreign legal persons against storing and transportation in the Republic of Lithuania alcoholic products without holding a licence issued in accordance with the procedure established by the Government <…> for alcohol product production, import and wholesale or retail trade, except for the cases set forth in paragraph 3 of this Article) shall not be applied (among other things) also to "ethyl alcohol which is used in production (including the production of biofuel or fuel compounds which conform to standards or the requirements established by the legal acts, for which dehydrated and denatured ethyl alcohol is used), as well as for technical, medical, veterinary needs or for scientific research operations, which is acquired, stored, transported and used by the enterprises, institutions and organisations which have permits issued according to the procedure established by the Government <…>, save the cases provided for by the Government <…> when the permits are not obligatory";

– Article 11 whereof, *inter alia,* Paragraph 2 (wording of 25 April 2006) of Article 34 of the Law was amended and it was prescribed: "For the production and sale of alcoholic products which do not conform to the safety and quality requirements in force in the Republic of Lithuania, import and export of wine products and ethyl alcohol of agricultural origin, production, storing, transportation and sale of alcoholic products without possessing an appropriate licence for this activity, import of alcoholic products (except wine products and ethyl alcohol of agricultural origin) if the institution authorised by the Government <…> is not informed according to the procedure established by the Government <…> or the institution authorised by it, also for the failure to comply with the requirements set in Items 2–11 of Paragraph 1, Items 2–9 of Paragraph 2 and Paragraphs 5–11 and Paragraph 13 of Article 17 of this Law, as well as for violation of limitations or prohibitions on trading in alcoholic beverages on official holidays and mass event days which were established by municipal councils, legal persons and branches and representations of foreign legal persons shall be imposed a fine in the amount from one thousand to fifty thousand litas"; thus, the list of the violations of law for which the legal persons and branches and representations of foreign legal persons have to be imposed a fine was expanded, in addition, the maximum size of the fine (the top limit) was reduced from eighty thousand to fifty thousand litas.

It needs to be noted that, as mentioned before, the Law on Amending and Supplementing Articles 2, 7, 11, 12, 16, 17, 18, 26, 29, 33 and 35 of the Law on Alcohol Control, whereby the said amendments and supplements were made, came into force on 1 August 2007, i.e. already after petitions No. 1B-35/2005, No. 1B-23/2006, No. 1B-30/2006 of the Supreme Administrative Court

of Lithuania, a petitioner, in which the compliance of Paragraph 17 (the wording of 9 March 2004 and/or of 25 April 2006) of Article 34 of the Law with the Constitution is impugned and subsequent to which this constitutional justice case is considered, had been received at the Constitutional Court. The Supreme Administrative Court of Lithuania does not raise the issue of the application of the provisions of the Law *(inter alia,* Paragraph 17 (set forth in the wordings of 9 March 2004 and 25 April 2006) of Article 34 thereof the compliance of which with the Constitution is impugned in the constitutional justice case at issue) in the course of the consideration of corresponding administrative cases.

13. The doubts of the Supreme Administrative Court of Lithuania, a petitioner, regarding the compliance of Paragraph 17 (the wording of 9 March 2004 and of 25 April 2006) of Article 34 of the Law with the Constitution are based on the fact that, in its opinion, when not only the fine but also the abolishment of the validity of the licence and non-issuance of a new licence is established for the corresponding violations of law and when all that is named as "economic sanctions" in the Law, one violates the constitutional principle *non bis in idem,* as well as the powers of the court, taking account of the nature of the violation of law, its extent, the circumstances mitigating the liability and other significant circumstances (due to which, the corresponding sanction would be obviously too big for the violator of law, because it would be disproportionate to the committed violation of law, and thus, unfair) and following the principles of justice and reasonableness, to impose a smaller measure than it is enshrined in these provisions, or not to impose it, are restricted, thus, the powers of the court to administer justice are restricted.

14. In a democratic state under the rule of law the legislature has the right and duty to prohibit by means of law such deeds that may essentially harm people, society or interests of the state or there might be a threat of the occurrence of such harm (the Constitutional Court's rulings of 8 May 2000, 10 June 2003, 29 December 2004, and 10 November 2005). While establishing in the laws which deeds are in conflict with law, as well as while establishing the legal liability for the deeds which are in conflict with law, the legislature has broad discretion. Taking account of various significant factors, it may also change the corresponding legal regulation.

In this context, it needs to be noted that, as the Constitutional Court has held, in the Constitution, one has consolidated the concept of a democratic state under the rule of law where the state not only seeks to protect and defend the person and society from crimes and other dangerous violations of law, but also is able to do it efficiently (the Constitutional Court's rulings of 29 December 2004 and 16 January 2006).

15. The "economic sanctions" with which the legal regulation impugned in this constitutional justice case is related, namely, the fine and the abolishment of the validity of the licence and non-issuance of a new licence, are established for violations of the Law on Alcohol

Control. Under this law, the wholesale and retail trade in alcoholic products is the activity which should be licensed, i.e. such activity, in which the economic subject may engage only upon holding the corresponding permit-licence; the licence is issued if the economic subject meets certain necessary requirements. The licensing of wholesale and retail trade in alcoholic products is related to the fact that these products are categorised as the special products the record, production, bringing in, import, export, trade and consumption whereof is, under the Law on Alcohol Control and other laws and legal acts, subject to a special state regulation regime (Article 4 (wording of 9 March 2004) of the Law).

The said special state regulation regime, *inter alia,* the fact that wholesale and retail trade in alcoholic products is a licensed activity, as well as the fact that for violations of this special state regulation regime, one may and must establish sanctions, is a grounded, constitutionally justified thing, *inter alia,* due to universally known negative consequences which may be caused by the consumption of alcohol to the human health, public order and security of the members of society, as well as to other values which are protected and defended by law. These negative consequences *(inter alia,* the fact that due to the uncontrolled or insufficiently controlled sale of alcohol products to the population phenomena of social pathology are becoming more frequent) have been more than once indicated also in the Constitutional Court's acts, *inter alia,* its rulings of 13 February 1997, 9 July 1998 and 26 January 2006. It also needs to be mentioned that the purpose of this law established in the Law on Alcohol Control itself is "to reduce the general consumption of alcohol, its availability, especially to minors, alcohol abuse, the damage caused by it to health and the economy and to establish the legal principles of granting economic subjects the right to production, sale, bring in, import and export the alcohol products, regulated in this Law" (Paragraph 1 (wording of 9 March 2004) of Article 1 of the Law).

16. It needs to be held that the legislature has to establish not only the necessary requirements which may must be complied by the economic subjects which seek to get the licences to engage in wholesale and retail trade in alcoholic products (as well as in any other licensed activity), but also the requirements which must be followed by the persons who received such licences, as well as the basis and procedure of the abolishment of the validity of the issued licences. Namely that was done in the legal acts the provisions of which are impugned in this constitutional justice case, *inter alia,* in the Law on Alcohol Control. Thus, a presumption should be made that all economic subjects which, according to the possessed licences, engage in this licensed activity (as well as in any other licensed activity) know and understand the conditions which they must meet, as well as that they know that when they violate some of these conditions, the validity of the licence issued to them will be abolished (under the decision of the state or municipal institution which, under the law, has the powers to issue the licences to engage in wholesale or retail trade in alcoholic

products as well as to abolish the validity thereof).

Thus, following the conditions of the licences and observation thereof is a necessary precondition for the fair competition in the corresponding market, in the considered case—in the market of trade in alcoholic products. The protection of fair competition is a constitutional obligation of the state (Paragraph 4 of Article 46 of the Constitution).

17. It needs to be noted that such sanction as the abolishment of the validity of the licence and non-issuance of a new licence are established not only in the Law on Alcohol Control, but also in some other laws. In addition, the laws also enshrine at least a partially similar sanction—deprivation of the special right; for example, it is established in the CAVL and is applied to natural persons.

18. The content and purpose of the "economic sanctions"—the fine and the abolishment of the validity of the licence and non-issuance of a new licence—established in Article 34 (wording of 9 March 2004 and 25 April 2006) of the Law are different.

The fine is a sanction of repressive nature, whereby the violator of law—an economic subject—is punished and whereby direct negative impact to the property and economic situation of that economic subject, thus, also to the ownership right and freedom of economic activity is made because its monetary funds are alienated; on the other hand, such violator of law, after it has paid the fine, may continue engaging in the corresponding activity without feeling any additional limitations, as well as implement its other rights.

However, the abolishment of the validity of the licence and non-issuance of a new licence (as deprivation of a special right) which are established in the Law on Alcohol Control and some other laws is such a sanction whose negative impact to the property and economic situation of the economic subject is made not directly, i.e. not by alienating (as in case of the fine) its monetary funds, but by not permitting it to engage in the corresponding activity (for a certain time). Such sanctions are called prohibition sanctions. The purpose of the abolishment of the validity of the licence and non-issuance of a new licence as the prohibition sanction is not only—and not as much as—to punish the violator of law, but, first of all, to carry out prevention: a subject of law, which used the licence and violated the conditions with which the use of that licence is linked, is removed (for a certain time) from the corresponding market so that it would no longer make harm for the values which are defended and protected by law; and it is removed from the market because of the fact that at that time when it was still the participant of that market, it violated the essential conditions of being in that market (the conditions which, doubtless to say, were known and understood by that subject): it did not comply with the imperative requirements of law; it is considered that if such economic subject was permitted to continue being a participant of the market, there would arise a threat that the competition in that market would be unfair, as well as

there would arise a threat to the rights of the consumers and other persons, one would harm various values which are consolidated in, and protected and defended by the Constitution and one would harm the public interest. Namely because of the fact that it is sought to protect and defend these constitutional values and the public interest, one limits the ownership right and freedom of economic activity of the economic subject, the violator of law, which, as the Constitutional Court has held in its acts more than once, are not absolute. In the context of the constitutional justice case at issue, it needs to be noted that the violations of the requirements of production, bringing in, import, export, trade and consumption of alcoholic products, if one does not react to them properly, may create preconditions for harming human health, public order and security of the members of society and economic interests of the state (the system of the economy, the financial order, etc.). Therefore, it is understandable and reasonable that the state takes the measures, also providing for corresponding prohibition sanctions in the laws, that the corresponding market, especially such for which particular state regulation regime is applied, would be protected from such participants of the market which, being in that market, acted not according to its rules, but in breach of the rules.

In this context, it needs to be emphasised that, under the Constitution, the state shall regulate economic activity so that it serves the general welfare of the Nation (Paragraph 3 of Article 46 of the Constitution). The Constitutional Court has held that freedom of individual economic activity may be limited when it is necessary to defend the interests of the consumers and to protect fair competition and other values which are consolidated in the Constitution (the Constitutional Court's rulings of 6 October 1999 and 13 May 2005). It has been more than once held that in acts of the Constitutional Court that it must be done by means of a law, but not by means a substatutory legal act.

In the context of the constitutional justice case at issue, it should be particularly emphasised that, as the Constitutional Court has held, the freedom and initiative of individual economic activity, among other things, implies freedom of fair competition (the Constitutional Court's ruling of 31 May 2006). It has been held in this ruling of the Constitutional Court that following the conditions of the licences and the observation thereof are a necessary precondition for fair competition in the corresponding market. Thus, freedom of economic activity of the economic subject which violated the rules of fair competition enshrined in the licence not only may, but usually also has to be limited.

19. While discussing the differences of the fine and the abolishment of the validity of the licence and non-issuance of a new licence—the sanctions established in Article 34 (wordings of 9 March 2004 and 25 April 2006) of the Law—it needs also to be noted that Article 34 (wordings of 9 March 2004 and 25 April 2006) of the Law established the top and the bottom limits of the fine —"from one thousand litas to eighty thousand litas"—even though the abolishment of the validity

of the licence and non-issuance of a new licence is an indivisible sanction in the aspect that any "partial", i.e. non-absolute, incomplete abolishment of the validity of the licence is in general impossible: the validity of the licence may be either abolished (if there is the ground established in the Law), or it may not be abolished (if there is no such ground); in this context, it needs to be noted that the abolishment of the validity of the licence to engage in wholesale in alcoholic beverages only in the place of trading where the corresponding violation of law was established which was established in Paragraph 17 (wording of 25 June 2006) of Article 34 of the Law is also not to be regarded as such "partial" abolishment of the validity of the licence, because it is absolute in the place of trading where the corresponding violation of law was established.

20. The prohibition sanction—the abolishment of the validity of the licence and non-issuance of a new licence—established in Paragraph 17 (wordings of 9 March 2004 and 25 April 2006) of Article 34 of the Law is indivisible, or integral one, also in another aspect. This sanction is composed of two elements: (1) the abolishment of the validity of the licence; (2) the non-issuing of a new licence (for a certain time). Nevertheless, there are no legal grounds to state that this prohibition sanction, only because of the fact that it is composed of two mentioned elements, may be regarded as two separate sanctions which are imposed upon the same violator of law—an economic subject—for the same violation of law, as the said two elements are inseparably related: on the one hand, the abolishment of the validity of the licence to engage in wholesale and retail trade in alcoholic products namely because of the fact that the economic subject which holds the licence made one or a few violations of law specified in Paragraph 17 (wordings of 9 March 2004 and 25 April 2006) of Article 34 of the Law always implies, in a compulsory manner, the fact that the said economic subject will not be issued (if it applied regarding it) a new licence for a certain (defined) time; on the other hand, a new licence may be not issued namely on the legal ground that namely because of the fact that the economic subject which had the licence committed one or several violations of law specified in Paragraph 17 (wordings of 9 March 2004 and 25 April 2006) of Article 34 of the Law (because the Law establishes also other grounds when the licence may not be issued) only to such economic subject whose former licence was revoked namely on that legal ground and only until the term established in Paragraph 17 (wordings of 9 March 2004 and 25 April 2006) of Article 34 of the Law expires. The essence of the discussed prohibition sanction as a whole is the non-issuing of a new licence after the licence which had been held by the economic subject was revoked for the corresponding violations of the Law. It needs to be emphasised that the abolishment of the validity of the licence is not an end in itself, it is the condition and precondition of the non-issuing of a new licence; the non-issuing of a new licence (until the established term is expired) extends and supplements, essentially gives sense to the action of the abolishment of the validity of the licence, as the abolishment of the validity of the licence itself would hardly have any

clearly definable sense if the violator of law—the economic subject—whose licence was revoked for non-compliance with the imperative requirements of law could immediately get the same licence anew. The purpose of the discussed prohibition sanction as a whole is to remove (for the established time) its former participant, which violated the essential conditions of being in that market (the conditions which, doubtless to say, were known and understood by that participant), from the market of trade in alcoholic products. The preventive function is performed not only by the second one of the said two elements of this prohibition sanction (non-issuing of a new licence (for a certain time))—it is performed by this entire sanction; the purpose and essence of all of this sanction as a whole is prevention.

In this context, it needs to be noted that certain laws (and the substatutory legal acts which were issued on the basis of these laws) establish the so-called preventive measures (they are often called this way explicitly) which are not fully comparable to punishments or administrative penalties; the essence of preventive measures is the application of certain limitations on the person in order that this person would not commit the deeds which are contrary to law, and to commit which he is inclined and which he committed until a corresponding preventive measure was imposed upon him, and in order that the public interest and the rights of other persons would be protected. Various preventive measures (which should actually be categorised as belonging not only to public law, but also to private law) are consolidated in laws of most other states. Even though the abolishment of the validity of the licence and non-issuance of a new licence was not (and is not at the moment) *expressis verbis* defined as a preventive measure in the Law on Alcohol Control, this sanction, as well as other prohibition sanctions, has the features of such measure and, taking account of its content and purpose, may be regarded as a preventive measure. However, disregarding the particularity of the preventive measures, there is no ground not to consider the abolishment of the validity of the licence and non-issuance of a new licence (as other preventive measures which, undoubtedly, may be more or less different from “usual” punishments or administrative penalties) which are established in the Law on Alcohol Control as a sanction in general, because preventive measures, as well as “usual” punishments and administrative penalties, make negative impact on the implementation of the corresponding rights of persons, they must always be imposed by a decision of a competent institution when reacting to such behaviour of the person which is not tolerated by law—they are always the response of the public power to the deeds which violate the public interest, which are prohibited by law and which have been committed by that person, and they are applied according to the sanction of the corresponding legal norm. In addition, the same requirements of justice, proportionality, expedience and lawfulness (including the procedural one) are applied to preventive measures as to “usual” punishments or administrative penalties. It needs to be noted that the compliance of preventive measures (applied not only to

natural but also to the legal persons) which are established in various laws with the Constitution has been the matter of investigation in constitutional justice cases considered by the Constitutional Court (the Constitutional Court's rulings of 18 April 1996, 1 October 1997, and 13 August 2007). On the other hand, the jurisprudence of the Constitutional Court also notes the preventive importance of "usual" punishments and administrative penalties (the Constitutional Court's rulings of 9 December 1998 and 10 November 2005).

21. The Law, *inter alia,* Paragraph 17 (wordings of 9 March 2004 and 25 April 2006) of Article 34 thereof, enshrined such overall legal regulation, under which, the discussed prohibition sanction—abolishment of the validity of the licence and non-issuance of a new licence—was not only a sanction which is integral and indivisible itself, but also a sanction which is inseparable from another sanction—the fine—which is imposed upon the same violator of law—the economic subject for the corresponding (the same) violation of law. First of all, one had to establish the fact of the corresponding violation of law and that this violation of law was committed by the economic subject which is brought to legal liability and that for the said violation of law the violator of law—the economic subject—had to be imposed a fine (the institutions which have the corresponding powers to do so were specified in Paragraph 1 (wording of 9 March 2004) of Article 34 of the Law), and, after that, the institution which has the powers to issue such licences, abolishes the validity of the licence held by such subject (and if one applies regarding a new licence, it would not be issued for the established period of time). In addition, the said institution did not have the powers to decide whether to revoke the licence or not—if the violation of law specified in Paragraph 17 (wordings of 9 March 2004 and 25 April 2006) of Article 34 of the Law was committed, it had to revoke the licence. Thus, the discussed prohibition sanction should not be regarded as an independent one, as it only supplemented the corresponding fine imposed under other provisions of the Law, and it could not be applied if the economic subject was not imposed the fine for the corresponding violation of law. In this context, it needs to be emphasised that the Law established (as still establishes) such overall legal regulation, under which, the violator of law—the economic subject which committed one or a few violations of law specified in Paragraph 17 (wordings of 9 March 2004 and 25 April 2006) of Article 34 of the Law—had definitely to be imposed a monetary fine, it could not be exempted from this sanction neither under this Law, nor under other laws.

Thus, the discussed prohibition sanction—the abolishment of the validity of the licence and non-issuance of a new licence—had to be applied only if it had been established that an economic subject committed the corresponding violation of law—it did not comply with the imperative requirements of law—and that violator of law—the economic subject—was punished by imposing a monetary fine (from which it could not be exempted). And if the fact of the corresponding violation of law was not established, the licence could not be revoked based on Paragraph 17 (wordings of 9

March 2004 and 25 April 2006) of Article 34 of the Law.

It also needs to be held that the fact that the institution specified in Paragraph 1 (wording of 9 March 2004) of Article 34 of the Law, while determining the commission of one or more violations of law specified in Paragraph 17 (wordings of 9 March 2004 and 25 April 2006) of Article 34 of the Law and that the violator of law, the economic subject (i.e. an enterprise), must be punished for it by imposing a monetary fine, implies that the licence held by that economic subject had to be revoked and that a new licence could not be issued for the time defined in the Law.

22. Under Article 41 titled “Lodging complaints against decisions regarding application of economic sanctions” (wording of 9 March 2004) of the Law, “economic subjects, which object to the decisions of the institutions indicated in Paragraph 1 of Article 34 of this Law regarding application of economic sanctions shall have the right to lodge a complaint against the decision with a court within a month’s period from the delivery of the decision to them according to the procedure established by the Law on the Proceedings of Administrative Cases of the Republic of Lithuania” (Paragraph 1), and “the application to a court shall suspend the implementation of the decisions of the institutions indicated in Paragraph 1 of Article 34 of this Law regarding the application of economic sanctions” (Paragraph 2).

It goes without saying that the court had the powers to abolish such decision provided the decision was adopted without the ground established in the Law. On the other hand, if such decision was grounded on the Law, then the court, under this Law, did not have the powers to exempt the violator of law from the monetary fine—it could only decide that the said fine might be reduced if such decision was grounded on the Law; thus, the way was paved for the abolishment of the licence which followed the imposition of the monetary fine.

In the context of Article 41 (wording of 9 March 2004) of the Law, in which the reference is made to Paragraph 1 of Article 34 of this law, it needs to be noted that Paragraph 1 (wording of 9 March 2004) of Article 34 of the Law does not specify the institutions which have the powers to abolish the validity of the licences—it only specifies the institutions which have the powers to impose monetary fines for the violations of the Law on Alcohol Control.

23. Namely this aspect of the legal regulation established in Paragraph 17 (wordings of 9 March 2004 and 25 April 2006) of Article 34 of the Law, i.e. the fact that the prohibition sanction—the abolishment of the validity of the licence and non-issuance of a new licence—had to be applied in all the cases, when for the corresponding violation of law the monetary fine was imposed upon the economic subject, raises doubts to the Supreme Administrative Court of Lithuania, a petitioner, from whose arguments one may decide that, according to the petitioner, it is possible to avoid the conflict with the constitutional principle *non bis in idem,* if a court, with which one could lodge a complaint against the decision to impose a fine for the corresponding violations of law, could decide

that after the violator of law—the economic subject—was punished by imposing a monetary fine, the validity of the licence it held could also be not abolished or a new licence could be not issued for a shorter time than it is specified in Paragraph 17 (wordings of 9 March 2004 and 25 April 2006) of Article 34 of the Law.

In this context, it should be mentioned that both the Law on Alcohol Control and other laws which establish monetary fines as well as prohibition sanctions—the abolishment of the validity of a certain licence and the non-issuing of a new one (for a certain time)—enshrine very varied legal regulation: in some cases, for the same violation of law, a monetary fine is imposed and the validity of the licence is abolished (and a new licence is not issued for a certain time), in other cases, the validity of the licence is abolished (and a new licence is not issued for a certain time) when a certain violation of law is committed repeatedly and when a monetary fine is paid for the violation of law which was committed for the first time, while still in other cases only a monetary fine is established for the violation of law and the abolishment of the licence is not established. In this ruling of the Constitutional Court it has been stated that, while establishing in the laws as to which deeds are in conflict with law, as well as while establishing the legal liability for the deeds which are in conflict with law, the legislature has broad discretion.

24. It should be particularly emphasised that the Law established (and establishes at present) such overall legal regulation, under which, the mere fact of the violation specified in Paragraph 17 (wordings of 9 March 2004 and 25 April 2006) of Article 34 of this law could not (and cannot at present) be enough in order to abolish the validity of the licence held by the corresponding economic subject (and not to issue the new licence for the established time). It has been mentioned that, under Paragraph 18 (wording of 9 March 2004, still not amended) of Article 34 of the Law, the validity of the licences is abolished and the licences are not issued repeatedly for the enterprises "if a judgment of conviction has become effective or a judgment or a decision of the court, a decision of the customs, the tax inspectorate, the police or the Service concerning the imposition of a punishment or penalty has become effective in respect of them or in respect of the heads of their administration or other employees (if they have acted on behalf of the enterprise or in its interests) for contraband of alcohol products, unlawful storing, transportation or sale of alcoholic beverages without tax stamps and also for the sale, transportation or storing of counterfeit alcohol products". Even though Paragraph 17 (wordings of 9 March 2004 and 25 April 2006) of Article 34 and Paragraph 18 (wording of 9 March 2004) of this article of the Law are designed for different legal situations, one may not construe Paragraph 17 (wordings of 9 March 2004 and 25 April 2006) of Article 34 of the Law so that, purportedly, it also allowed (and allows at present) punishing (imposing a limitation on the ownership right and freedom of economic activity) the enterprise, i.e. an economic subject, for such violations of law, the subject of which is not that enterprise, as the

violations were committed by other persons who acted not on behalf of the enterprise and not in its interests. Such construction would mean that the enterprise is punished even for such violations of law which were not committed by it, for the prevention of which the heads of administration or the employees of that enterprise took all possible measures, and which were committed against the will of the heads of the administration of this enterprise or its employees. Such legal regulation, if it were construed in this way, would essentially deviate from the requirements of the imperative of justice which stems from the Constitution and those of the constitutional principle of a state under the rule of law and would create preconditions for violating various rights of a person.

In addition, such construction would totally ignore the provisions of Paragraph 2 of Article 39 of the Law that "upon consideration of the case, the institutions specified in Paragraph 1 of Article 34 of the Law shall have the right to adopt the decision: <…> to apply the economic sanctions established by this Law" (Paragraph 1) and that "a decision shall be adopted following the consideration of the case", in which "proof of the violator's guilt on which the decision is based <… > must be specified".

Thus, such overall legal regulation was established (and is established at present) in the Law, under which, the validity of the licence had to be abolished and a new licence had to be not issued (for a certain time) only in the case, when a certain violation of law established in Paragraph 17 (wordings of 9 March 2004 and 25 April 2006) of Article 34 of the Law was committed on behalf of the enterprise or in its interests by the heads of administration of that enterprise or by other employees. Thus, while deciding on the legal liability for the violations of law specified in Paragraph 17 (wordings of 9 March 2004 and 25 April 2006) of Article 34 of the Law, one must establish not only the fact of the violation of law, but also the fact that the said violation of law was committed by the economic subject which is brought to legal liability (i.e. the subject of that violation of law and the subjective aspect, as the elements of its composition); in other words, it is not enough that the corresponding violation would be committed in the enterprise and that it would be committed by the head of administration of that enterprise or other employee—it must be committed on behalf of the enterprise or in its interests.

In this context, it needs to be noted that Paragraph 1 (wording of 9 March 2004) of Article 33 of the Law prescribes that administrative liability established in the laws is applied to natural persons for the violations of this law. Such liability is established in the CAVL (the legal regulation established wherein is not a matter of investigation in this constitutional justice case).

The establishment of the elements of the composition of the violation of law is related to the procedure of proving, it is the matter of administrative practice and of practice of courts (which, *inter alia,* control decisions of institutions of public administration). More comprehensive construction of these questions would exceed the limits of this constitutional justice case.

25. It needs to be held that the abolishment of the validity of the licence and non-issuance of a new licence, as the prohibition sanction established in the law which, first of all, carries out a preventive function, in itself may not raise any doubts that, purportedly, due to some reasons such sanction is impermissible and deviating from the requirements of justice, proportionality and other requirements of a state under the rule of law which stem from the Constitution. After all, if a former participant of the market of trade in alcoholic products, upon violating the essential conditions of being in that market (the conditions which, doubtless to say, were known and understood by that participant), would not be removed (for the established time) from that market (freedom of its economic activity in this sphere would not be limited) by a decision of competent state institutions, one could reasonably state that neither fair competition, nor the rights of the consumers would be protected and defended, moreover, a threat would emerge for various rights of other persons, *inter alia,* for human health or even life (due to the negative consequences, which may be caused by the consumption of alcohol, mentioned in this ruling and other rulings of the Constitutional Court which were adopted in the former constitutional justice cases), one would also harm various values which are enshrined in, and protected and defended by the Constitution, and one harm the public interest.

Thus, it is permitted not to apply such a prohibition sanction (and, at the same time, the preventive measure) as the abolishment of the validity of the licence to engage in wholesale or retail trade in alcoholic products and non-issuance of a new licence, if it is established in the law, only in the case when the revocation of the licence is obviously disproportionate (inadequate) to the committed violation of law and, thus, unfair. It should be emphasised that the disproportion (inadequacy) must be very much clear and unquestioned so that if one follows the principles of reasonableness and justice, any doubts could arise regarding this.

On the other hand, as mentioned before, the Law on Alcohol Control, whose provisions are impugned in this constitutional justice case, does not establish any such possibility of not applying the said prohibition sanction for the violations of law specified in Paragraph 17 (wordings of 9 March 2004 and 25 April 2006) of Article 34 of the Law in general.

26. While deciding, subsequent to the petition of the Supreme Administrative Court, a petitioner, whether the legal regulation established in Paragraph 17 (wordings of 9 March 2004 and 25 April 2006) of Article 34 of the Law was not in conflict with Paragraph 5 of Article 31 of the Constitution in which it is prescribed that "no one may be punished for the same crime a second time" and which enshrines the principle *non bis in idem,* it should be held that, taking account of the nature of the violations of law for which the corresponding sanctions are established, as well as of the socially significant objectives which are sought by such legal regulation, one may establish, by law, that for a certain violation of law, any of the following may be imposed: the monetary fine, the

abolishment of the validity of the licence and non-issuing (for a certain time) of a new licence.

In this context, it needs to be noted that, as the Constitutional Court held in its rulings, the constitutional principle *non bis in idem* means the prohibition on punishment a second time for the same deed that is contrary to law, i.e. for the same crime, as well as for the same violation of law which is not a crime (the Constitutional Court's rulings of 7 May 2001, 2 October 2001, and 10 November 2005). However, this constitutional principle does not mean that different kinds of liability may not be applied to the person for a violation of law (the Constitutional Court's rulings of 7 May 2001 and 10 November 2005). In addition, in itself, the constitutional principle *non bis in idem* does not deny a possibility of applying more than one sanction of the same kind (i.e. defined by the norms of the same branch of law) to a person for the same violation, i.e. the main and additional punishment or the main and additional administrative penalty (the Constitutional Court's ruling of 10 November 2005).

In the context of the constitutional justice case at issue, it should also be noted that the constitutional principle *non bis in idem* does not prohibit applying the prohibition sanction—a preventive measure—together with another administrative penalty to the person.

27. Thus, in itself the constitutional principle *non bis in idem* does not deny a possibility of imposing more than one sanction upon the person for the same violation of law. It is possible to answer whether the corresponding legal regulation does not violate the said constitutional principle only upon assessing the nature of the violations of law for which the corresponding sanctions are established, as well as the socially significant objectives sought by the legislature. The fact whether a certain administrative penalty (or punishment) established by law is assigned to the main, or additional categories, or whether it is not assigned to any of these categories, is of no significance in the aspect of the compliance of the corresponding legal regulation with the constitutional principle *non bis in idem,* because the division of administrative penalties (as well as punishments) into main and additional ones stems not from the Constitution, but from the law, i.e. from ordinary law.

In this context, it needs to be mentioned that the legislature has a broad discretion to establish the categories of the administrative penalties to which they may be assigned; however, he may also decide not to establish them. The CAVL (under which, natural persons, but not legal persons—economic subjects—are brought to administrative liability) enshrines the provision that for one administrative violation of law, the main penalty or the main and additional penalties may be imposed, however, the penalties and the "economic sanctions" established in the so-called special laws, such as the Law on Alcohol Control, are not divided into main and additional ones.

It needs to be mentioned that the division of administrative penalties into main and additional ones, which is enshrined in the Code of Administrative Violations of Law of the Republic of Lithuania, is typical not of all states of Western law traditions. In addition, the CAVL, in which

such a division is enshrined is, at present, one of the two still effective laws (with a number of amendments and supplements) adopted yet before the restoration of the independent State of Lithuania and every year the validity of the CAVL is prolonged by means of a separate law.

28. It also needs to be noted that, as the Constitutional Court held in its ruling of 3 November 2005, neither such individual type of legal liability, nor an individual legal institute as “economic liability”, exists at all. In the constitutional justice case, in which the said Constitutional Court’s ruling was adopted, subsequent to the petitions of the Vilnius Regional Administrative Court and the Supreme Administrative Court of Lithuania, a petitioners, it was considered whether the legal regulation of the Republic of Lithuania’s Law on Tobacco Control, which enshrined monetary fines for certain violations of that law was not in conflict with the Constitution. Among other things, it was held that by means of all the sanctions—monetary fines—consolidated in Paragraph 2 (wording of 16 March 2000), Paragraph 3 (wording of 11 June 2002), Paragraph 4 (wording of 11 May 1999), and Paragraph 7 (wording of 11 June 2002) of Article 21 of the Law on Tobacco Control as well as in other provisions of the same article (wording of 20 December 1995 with the amendments and supplements made till 20 November 2003) pre-conditions were created, *inter alia,* to exert a negative influence on the economic situation of the economic subjects that were held legally liable and, thus (in addition to other ways) to ensure that the economic subjects follow the requirements established in the Law on Tobacco Control (the Constitutional Court’s ruling of 3 November 2005). One must pay attention to the fact that Article 21 (wording of 20 December 1995 with subsequent amendments and supplements made till 20 November 2003) of the Law on Tobacco Control did not establish the abolishment of the validity of the licence (to engage in production or import, wholesale or retail trade of tobacco products) and non-issuance of a new licence; such an institute of the “economic sanctions” was consolidated in the article designed for violations the Law on Tobacco Control only in the Republic of Lithuania’s Law on Amending the Law on Tobacco Control and the Law on Recognition of the Republic of Lithuania’s Law on Implementing the Law on Tobacco Control as No Longer Valid adopted by the Seimas on 20 November 2003 and after it had been set forth in its new wording; by the way, in the said constitutional justice case, the compliance of the provisions, *inter alia,* of Article 26 titled “Economic Sanctions” of the Law on Tobacco Control which was set forth in its new wording, with the Constitution was also investigated, however, only to the extent that it established monetary fines for corresponding violations in that law, and not to the extent that it established the abolishment of the validity of the licence (to engage in production or import, wholesale or retail trade of tobacco products) and non-issuance of a new licence (for a certain time) for the same violations of law.

29. On the other hand (it is obvious from the practice of the Supreme Administrative Court of Lithuania, to which the representatives of the Government, the party concerned, refer in their

written explanations for the Constitutional Court), in court practice, the “economic sanctions” for violations of the Law on Alcohol Control (as well as the “economic sanctions” for violations of the Law on Tobacco Control) are treated namely as administrative sanctions. It needs to be noted that by both sanctions—a monetary fine and abolishment of the validity of the licence and non-issuance of a new licence—established in Article 34 (wordings of 9 March 2004 and 25 April 2006) of the Law, preconditions are created to make a negative impact on the economic situation of the economic subjects which are brought to legal liability, and, thus (in addition to other ways) to ensure that the economic subjects would follow the requirements established in the Law. Upon application of these “economic sanctions”, the violators of law—economic subjects—experience, in addition to other things, restrictions of property nature—it is the response of the public authorities to the deeds committed by them which violated the public interest and which are prohibited by law.

30. It has been mentioned that, in itself, the constitutional principle *non bis in idem* does not deny a possibility of applying more than one sanction of the same kind for the same violation. It has also been mentioned that while deciding whether upon establishing by law more than one sanction for the same violation of law one does not violate the constitutional principle *non bis in idem*, one needs to assess the nature of the violations of law for which the corresponding sanctions are established, as well as the socially significant objectives which are sought by the legislature.

While deciding, whether the legal regulation established in Paragraph 17 (wordings of 9 March 2004 and 25 April 2006) of Article 34 of the Law was not in conflict with Paragraph 5 of Article 31 of the Constitution, it should be noted that:

– under Paragraph 17 (wording of 9 March 2004) of Article 34 of the Law, the validity of the licences to engage into the wholesale or retail trade in alcoholic products had to be abolished and no new licences had to be issued for five years from the day of the abolishment of the validity of the licences in case of violation of the following prohibitions: the prohibition on the sale, storing and transportation of alcoholic products without possessing documents certifying the conformity of the products according to the procedure established by the Government or an institution authorised by it, the prohibition on the sale, storing and transportation of alcoholic products, which are not recorded on the licences for the production, import, sale thereof and alcoholic products without holding a copy of mandatory legally valid documents for the acquisition or transportation of these products at the sales outlet (at the place of storage or keeping) and/or during the transportation thereof, the prohibition on the sale, storing and transportation of alcohol beverages which have been produced using ethyl alcohol of non-agricultural origin, the prohibition on the sale of alcoholic products whose safety and/or quality indicators do not meet the requirements in force in the Republic of Lithuania, the prohibition on the sale, storing and transportation of home-brewed alcoholic beverages, the prohibition on the sale of ethyl alcohol for natural persons, except non-

denatured ethyl alcohol of agricultural origin, sold in pharmacies to natural persons in accordance with the procedure established by the Ministry of Health; there are no legal arguments which would allow stating that for such violations of law, one could establish only a monetary fine, but the sanction such as the abolishment of the validity of the licence and non-issuance of a new licence for five years from the day of the abolishment of the validity of the licences could not be established;

– after Article 34, *inter alia,* Paragraph 17 thereof, had been set forth in the wording of 25 April 2006 and after it had been prescribed that the validity of the licence to engage in retail trade in alcoholic beverages, differently than the validity of the licence to engage in wholesale in alcoholic beverages, had to be abolished only in the place of trading where the violation was established, and a new licence had to be not issued not for five, but for one year from the day of the abolishment of the validity of the licence; in addition, the validity of the licences to engage in the wholesale or retail trade in alcoholic beverages had to be abolished for absence of the mandatory legally valid documents for the acquisition or transportation of alcoholic products at the enterprise, and it had not to be abolished (imposing only monetary fines on the violator of law) after the following prohibitions were violated: the prohibition on the selling, storing and transportation of alcoholic products without possessing documents certifying the conformity of the products according to the procedure established by the Government or an institution authorised by it, the prohibition on selling the alcoholic products whose safety and/or quality indicators do not meet the requirements in force in the Republic of Lithuania and the prohibition on the selling, storing and transportation of alcoholic products without holding a copy of mandatory legally valid documents for the acquisition or transportation of these products at the sales outlet (at the place of storage) and/or during the transportation thereof—all this did not change the situation in essence; while assessing Paragraph 17 (wording of 25 April 2006) of Article 34 of the Law in the aspect of its compliance with the constitutional principle *non bis in idem,* it needs to be held that there are no legal arguments which would allow stating that for such violations of law, one could establish only a monetary fine, however, it was not allowed to establish the abolishment of the validity of the licence and non-issuance of a new licence for one or five years (taking account of the fact, whether it is the licence to engage in retail trade in alcoholic beverages, or licence to engage in wholesale in alcoholic beverages) from the day of the abolishment of the validity of the licences.

31. Taking account of the arguments set forth, the conclusion should be drawn that Paragraph 17 (wordings of 9 March 2004 and 25 April 2006) of Article 34 of the Law was not in conflict with Paragraph 5 of Article 31 of the Constitution.

32. It has been mentioned that, in the opinion of the Supreme Administrative Court of Lithuania, a petitioner, Paragraph 17 (wordings of 9 March 2004 and 25 April 2006) of Article 34 of the Law is in conflict with Article 109 of the Constitution, as well as with the constitutional

principles of justice and a state under the rule of law, *inter alia,* because of the fact that when not only the fine but also the abolishment of the validity of the licence and non-issuance of a new licence is established for the corresponding violations of law, the powers of the court, taking account of the nature of the violation of law, its extent, the circumstances mitigating the liability and other significant circumstances (due to which, the corresponding sanction would be obviously too big for the violator of law, because it would be disproportionate to the committed violation of law, and thus, unfair) and following the principles of justice and reasonableness, to impose a smaller measure than the one enshrined in these provisions, or not to impose it, are restricted, thus, the powers of the court to administer justice are restricted.

33. The Constitutional Court, while construing Article 109 of the Constitution (in which it is prescribed that, in the Republic of Lithuania, justice shall be administered only by courts (Paragraph 1); while administering justice, the judge and courts shall be independent (Paragraph 2); when considering cases, judges shall obey only the law (Paragraph 3); the court shall adopt decisions in the name of the Republic of Lithuania (Paragraph 4)), has held more than once *(inter alia,* in its rulings of 21 December 1999, 9 May 2006, 6 June 2006, 27 November 2006, and 24 October 2007) that courts, when they administer justice, must ensure the implementation of law expressed in the Constitution, laws and other legal acts, they must guarantee the supremacy of law, protect human rights and freedoms. A duty to courts stems from Paragraph 1 of Article 109 of the Constitution to consider cases justly and objectively and to adopt reasoned and reasonable decisions (the Constitutional Court's rulings of 15 May 2007 and 24 October 2007). The principle of justice entrenched in the Constitution as well as the provision that justice is administered solely by courts mean that the constitutional value is not the adoption of a decision in court, but rather the adoption of a just court decision; the constitutional concept of justice implies not only a formal and nominal justice administered by the court, not only an outward appearance of justice administered by the court, but, most importantly, such court decisions (other court final acts), which by their content are not unjust; the justice administered only formally by the court is not the justice which is consolidated in and protected and defended by the Constitution (the Constitutional Court's rulings of 21 September 2006 and 24 October 2007).

The provisions of Article 109 of the Constitution are inseparably related to the provision of Paragraph 1 of Article 30 of the Constitution whereby the person whose constitutional rights or freedoms are violated shall have the right to apply to court. In the jurisprudence of the Constitutional Court, one emphasised the imperative which stems from the constitutional principle of a state under the rule of law and Paragraph 1 of Article 30 of the Constitution as well as other provisions of the Constitution that a person, who thinks that his rights or freedoms are violated, has an absolute right to an independent and impartial court—an arbiter who could solve the dispute; that

the constitutional right of a person to apply to court—also to apply to court regarding both the rights directly consolidated in the Constitution and acquired rights—cannot be artificially restricted, nor that the implementation of this right may be unreasonably burdened. It was held in the Constitutional Court's decision of 8 August 2006 that if the constitutional right of the person to apply to court were not ensured, the generally recognised legal principle *ubi ius, ibi remedium*—if there is a certain right (freedom), there must be a measure for its protection—would be disregarded. Such legal situation where a certain right or freedom of the person cannot be defended, also by means of the judicial procedure, although the person himself thinks that this right or freedom has been violated, is, under the Constitution, impossible, nor does the Constitution tolerate this.

34. While deciding, subsequent to the petition of the Supreme Administrative Court of Lithuania, a petitioner, whether the legal regulation established in Paragraph 17 (wordings of 9 March 2004 and 25 April 2006) of Article 34 of the Law, restricted the powers of the court to administer justice, it needs to be noted that in this paragraph it was established as for what violations of the Law, the enterprises, having the licences to engage in wholesale and retail trade in alcoholic products and not following the requirements of this law, are imposed the prohibition sanction—the abolishment of the validity of the licence and non-issuing (for the established time) of a new licence, however, it was not specified what subjects (institutions) have the powers to impose this sanction for the said violations on the enterprises.

It has been mentioned that the institutions which have the powers, for the violations of the Law, to impose monetary fines on the enterprises, are specified in Paragraph 1 (wording of 9 March 2004) of Article 34 of the Law, and the fact what powers these institutions have after they have considered the case—in Article 39 (wording of 9 March 2004) of the Law. It has also been mentioned that, under the Law, the decision regarding the abolishment of the validity of the licence had to be adopted not by the court, but by the institution which has the powers to issue the corresponding licences: if a violation of law specified in Paragraph 17 (wordings of 9 March 2004 and 25 April 2006) of Article 34 of the Law was committed, the corresponding institution had to revoke the licence.

Meanwhile, the powers of the court to decide whether the monetary fine imposed by the institutions specified in the Law is grounded and lawful are enshrined in Article 41 (wording of 9 March 2004) of the Law, in Paragraph 1 whereof, as mentioned before, it is prescribed that economic subjects, which object to the decisions, of the institutions indicated in Paragraph 1 of Article 34 of this Law regarding application of the economic sanctions shall have the right to lodge a complaint against the decision with a court within a month's period from the delivery of the decision to them according to the procedure established by the Law on the Proceedings of Administrative Cases, and in Paragraph 2—that the application with a court shall suspend the

implementation of the decisions of the institutions indicated in Paragraph 1 of Article 34 of this Law regarding the application of the economic sanctions.

35. It needs to be held that the provisions of Paragraph 17 (wordings of 9 March 2004 and 25 April 2006) (as well as of other paragraphs of this article which establish monetary fines for the violations of the Law and the legal regulation established in which is not impugned in this constitutional justice case) of Article 34 and the provisions of Article 41 (wording of 9 March 2004) of the Law are related: Paragraph 17 (wordings of 9 March 2004 and 25 April 2006) of Article 34 of the Law establishes “economic sanctions” (in the considered case—the abolishment of the validity of the licence and non-issuance of a new licence (for the established time)), and Article 41 (wording of 9 March 2004) is designed for the regulation of lodging complaints against these sanctions with a court.

Thus, the investigation into whether by the legal regulation established in Paragraph 17 (wordings of 9 March 2004 and 25 April 2006) of Article 34 of the Law, the powers of the court to administer justice were not restricted, also implies the necessity to assess the compliances of the legal regulation established in Article 41 (wording of 9 March 2004) of the Law with Article 109 of the Constitution with the constitutional principles of justice and a state under the rule of law, namely the fact whether, first of all, under this article, the court has a possibility, while considering the complaints of the economic subjects which object to the decisions of the institutions indicated in Paragraph 1 of Article 34 of this Law regarding the imposition of the monetary fines for the violations of law specified in Paragraph 17 (wordings of 9 March 2004 and 25 April 2006) of Article 34 of the Law, to take account of the nature of the violation of law, its extent, the circumstances mitigating liability and other significant circumstances, and, while following the criteria of justice and reasonableness, to impose a smaller fine than that established in the Law, because the imposed monetary fine may be obviously too big—disproportionate (inadequate) to the violator of law—and, thus, unfair, and, second, whether under this article, the economic subjects which object to the decisions of the institutions which have the powers to abolish the validity of the licences for the violations of law specified in Paragraph 17 (wordings of 9 March 2004 and 25 April 2006) of Article 34 of the Law may lodge a complaint against such decisions with a court and whether the court, even in the case when such violation of the Law was committed for which the abolishment of the validity of the licence is established, has the possibility of taking account of the nature of the violation of law, its extent, the circumstances mitigating liability and other significant circumstances, and while following the criteria of justice and reasonableness, and of deciding that the said prohibition sanction should not be applied because due to certain very important circumstances it is obviously disproportionate (inadequate) to the committed violation of law, thus, unfair.

36. While deciding whether, under Article 41 (wording of 9 March 2004) of the Law, the court has the possibility, while considering the complaints of the economic subjects which object to the decisions, of the institutions indicated in Paragraph 1 of Article 34 of this Law regarding the imposition of the monetary fines for the violations of law specified in Paragraph 17 (wordings of 9 March 2004 and 25 April 2006) of Article 34 of the Law, to take account of the nature of the violation of law, its extent, the circumstances mitigating liability and other significant circumstances, and while following the criteria of justice and reasonableness, to impose a smaller fine than that established in the Law, because the imposed monetary fine may be obviously too big —disproportionate (inadequate) to the violation of law—and, thus, unfair, it needs first of all to be held that the sizes (the top and bottom limits) of the monetary fines which had to be imposed for the violations of law specified in Paragraph 17 (wordings of 9 March 2004 and 25 April 2006) of Article 34 of the Law were enshrined in Paragraph 2 (wordings of 9 March 2004 and 25 April 2006) of Article 34 of the Law, namely for the violations of Items 1, 2, 4, 5, 8 and 9 of Paragraph 1 and Items 1, 2, 4 and 7 of Paragraph 2 of Article 17 of the Law (Paragraph 17 (wording of 9 March 2004) of Article 34 of the Law), as well as for the violations of Items 2, 4, 8 and/or 9 of Paragraph 1 and Items 2, 4 and/or 7 of Paragraph 2 of Article 17 of the Law (Paragraph 17 (wording of 25 April 2006) of Article 34 of the Law), the monetary fine was established "from one thousand litas to eighty thousand litas" (Paragraph 2 (wordings of 9 March 2004 and 25 April 2006) of Article 34 of the Law).

In the constitutional justice case at issue, the legal regulation established in Article 41 (wording of 9 March 2004) of the Law is only investigated in the aspect, insofar as it is related to the judicial consideration of the complaints regarding the imposition of the monetary fines established in Paragraph 2 (wordings of 9 March 2004 and 25 April 2006) of Article 34 of the Law, and one does not investigate anything related to monetary fines established in other paragraphs of this article (namely Paragraph 3 (wordings of 9 March 2004 and wording of 25 April 2006), Paragraphs 4, 5 and 6 (wording of 9 March 2004) of this article, as well as the rules for calculation of the concrete size of monetary fine established in Paragraphs 7, 8 and 9 (wording of 9 March 2004)).

37. It has been mentioned that Paragraph 1 of Article 41 (wording of 9 March 2004) of the Law *expressis verbis* enshrines the right of the economic subjects, which object to the decisions of the institutions indicated in Paragraph 1 of Article 34 of this Law regarding application of the economic sanctions to lodge a complaint against the decision with a court within a month's period from the delivery of the decision to them according to the procedure established by the Law on the Proceedings of Administrative Cases; thus, they also may lodge complaints against decisions regarding the imposition of the monetary fines for violations of law established in Paragraph 17

(wordings of 9 March 2004 and 25 April 2006) of Article 34 of the Law with a court.

38. It needs to be noted that the in respect of the Law on the Proceedings of Administrative Cases, the Law on Alcohol Control is a *lex specialis*. The essence of the principle *lex specialis derogat legi generali* is that if there exists competition between general and special norms, the special norm should be applied (the Constitutional Court's ruling of 18 October 2000); Paragraph 5 (wording of 8 April 2003) of Article 4 of the Law on the Proceedings of Administrative Cases provides that "if there is a contradiction between the norms of this law and other laws (save the special laws), the court must follow the norms of the Law on the Proceedings of Administrative Cases".

Because of the fact that, in respect of the Law on the Proceedings of Administrative Cases, the Law on Alcohol Control is *lex specialis*, and namely that law (i.e. the Law on Alcohol Control—Paragraph 2 (wordings of 9 March 2004 and 25 April 2006) of Article 34 thereof) established the bottom (as well as the top) limit of the monetary fines which had to be imposed for the violations of law specified in Paragraph 17 (wordings of 9 March 2004 and 25 April 2006) of Article 34 of the Law, but it did not prescribe that the court could impose a monetary fine which is smaller than the said bottom limit, it needs to be held that the court, while investigating the complaints of the economic subjects which object the decisions of the institutions indicated in Paragraph 1 of Article 34 of this Law regarding the imposition of the monetary fines for the violations of law specified in Paragraph 17 (wordings of 9 March 2004 and 25 April 2006) of Article 34 of the Law, had to heed the sizes of these established monetary fines and had no powers to impose a smaller monetary fine than it is established in Paragraph 2 (wordings of 9 March 2004 and 25 April 2006) of Article 34 of the Law.

39. In this respect, the discussed legal situation is virtually analogous to the legal situation considered in the constitutional justice case in which the Constitutional Court's ruling of 3 November 2005 was adopted (as mentioned before, in that constitutional justice case the Constitutional Court investigated the compliance of the provisions of the Law on Tobacco Control with the Constitution): in that ruling of the Constitutional Court it was held that "neither the Law on Tobacco Control <…> nor other laws contain any provisions under which the courts, when they considered complaints on monetary fines imposed by respective institutions under the corresponding article of the Law on Tobacco Control might impose a smaller fine upon the violators than that established in these provision".

40. It has been mentioned that the size of the monetary fine which had to be imposed under Paragraph 2 (wordings of 9 March 2004 and 25 April 2006) of Article 34 of the Law is "from one thousand litas to eighty thousand litas".

41. The Constitutional Court has held that the constitutional principles of justice and a state

under the rule of law also imply that the measures established by the state for the violations of law must be proportionate (adequate) to the violation of law and must comply with the lawful and socially significant objectives sought and do not have to restrain a person more than it is necessary in order to reach these objectives; there must be a fair balance (proportionality) between the objective sought to punish the violators of law and to ensure the prevention of the violations of law and the measures chosen for reaching this objective; the constitutional principle of justice requires to differentiate the established penalties so that while applying them, one could take account of the nature of the violation of law, of the circumstances mitigating the liability and other circumstances, that, while taking account of this, one could impose a smaller penalty than the minimal one provided for in the sanction, etc.; the monetary fines established in the laws for violations of law must be of such size which is necessary while seeking the legitimate and socially significant objective—to ensure the observance of laws and carrying out of the established duties (the Constitutional Court's rulings of 6 December 2000, 2 October 2001, 26 January 2004, 3 November 2005, and 10 November 2005).

In the Constitutional Court's ruling of 3 November 2005 which was adopted, as mentioned above, in a constitutional justice case, in which the compliance of the provisions of the Law on Tobacco Control with the Constitution was investigated, it was held that "if the law does not establish differentiated amounts of monetary fines, but if it consolidates really big monetary fines of strictly defined amount, and if no opportunity arises to differentiate the legal liability for a respective violation of law either from a corresponding law or other laws, then when one imposes the monetary fine one has no opportunity to individualise its size, while one takes account of the character, danger (gravity), the scale and other features of the violation of law, as well as of the circumstances mitigating the liability and of other circumstances (due to which a corresponding monetary fine would be too big for the violator of law, since it is disproportionate (inadequate) for the committed violation of law and, thus, unjust); such legal regulation would not be in line with the principles of justice and a state under the rule of law, which are entrenched in the Constitution". It was also held that "one would deviate from the constitutional principle of justice, thus, from the constitutional principle of a state under the rule of law, too, also in the case if the law consolidated not a monetary fine of strictly defined amount for violations of law, but such minimum and maximum monetary fines which would permit individualising the amount of the imposed fine to a certain extent, however, notwithstanding this, these monetary fines would be too strict to the violators of law just the same, i.e. they would really be big, and if in the course of the application of these sanctions—imposition of monetary sanctions—one would not be permitted to take account of the character, danger (gravity), the scale and other features of the violation of law (due to which a corresponding monetary fine would be too big for the violator of law, since it is disproportionate

(inadequate) for the committed violation of law and, thus, unjust) and to impose a smaller monetary fine to the violator of law than the minimum level of the sanction consolidated in the law". In addition, it was held that "the penalties in their system which are established in laws must be such so that a court, when it imposes the penalties, would be able to administer justice", that "the legislature, by choosing such a way of formulating the sanction—a monetary fine—for the commission of a deed contrary to law, when the article itself, which establishes legal liability for the said deed contrary to law, establishes such monetary fine that is really big, i.e. a sanction that is too strict to the violators, must, alongside, establish by means of a law also such legal regulation whereby a court, when it applies the sanction for this deed contrary to law, could, while imposing the monetary fine, take account of all the circumstances mitigating the liability, including those which are not *expressis verbis* specified in the law, and provided there are such circumstances mitigating the liability or other circumstances, due to which a corresponding monetary fine would clearly be too big to the violator of law, since it is disproportionate (inadequate) to the committed violation of law and, thus, unjust, to impose a smaller monetary fine upon him than that established in the law", and that "under the Constitution, the legislature cannot establish any such legal regulation so that a court, which, pursuant to the law adopts a decision on imposition of a monetary fine for violation of law, would not be able, in general, by taking account of the character, danger (gravity), the scale and other features of the violation of law (due to which a corresponding monetary fine would be too big for the violator of law, since it is disproportionate (inadequate) for the committed violation of law and, thus, unjust) and guided by the criteria of justice and reasonableness, to individualise the size of the really big monetary fine, i.e. the strict (to violators of law) penalty, and to impose a smaller monetary fine than the minimum monetary fine (the lowest level of the sanction) or the monetary fine of strictly defined amount which are established in the law. Thus, the powers of the court would be restricted, i.e. the exceptional empowerments of the court to administer justice, which are consolidated in Paragraph 1 of Article 109 of the Constitution would be limited, and, thus, preconditions would be created for violating the constitutional rights of subjects, *inter alia,* the constitutional right of the person to a fair trial".

On the other hand, in the Constitutional Court's ruling of 3 November 2005, it was also held that in itself (without an assessment of the character, danger (gravity), the scale and other features of a certain violation of law) the consolidation of strict (to violators of law) sanctions *(inter alia,* big monetary fines) for violations of the requirements of production, circulation and consumption of tobacco and its products cannot be construed as unfair or inadequate to the respective violation of law and that "although the sanctions—monetary fines—consolidated in the provisions of the Law on Tobacco Control should be regarded as really big (strict to violators of law), also that even if the amounts of these sanctions—monetary fines—are strictly defined, in themselves these sanctions

should not be regarded as deviating from the requirement of justice stemming from the Constitution or as otherwise violating the constitutional principle of a state under the rule of law". The provisions of the Law on Tobacco Control which were investigated in that constitutional justice case were ruled to be in conflict with the Constitution due to the fact that the strict monetary fines of strictly defined amount and which were strict (really big) to the violators, had to be imposed upon all economic subjects for respective violations of this law, regardless of any, including mitigating, circumstances due to which a corresponding monetary fine would have been clearly too big for the violator of law, since disproportionate (inadequate) to the committed violation of law, and, thus, unfair, and neither the Law on Tobacco Control nor other laws contained any provisions under which the courts, when they considered complaints on monetary fines imposed by respective institutions under the aforesaid provisions of Article 21 of the Law on Tobacco Control might impose a smaller fine upon the violators than that established in these provisions.

42. By the way, in the constitutional justice case, in which the Constitutional Court's ruling of 26 January 2004 (the references to which are made in this ruling of the Constitutional Court) was adopted, subsequent to the petition of the Vilnius Regional Administrative Court, a petitioner, the Constitutional Court investigated, *inter alia,* whether Paragraph 4 (wording of 20 June 2002) of Article 44 of the Law on Alcohol Control, under which, enterprises, establishments and organisations must pay a fine of ten thousand litas for the first violation of the requirements of Article 30 of this law, and a fine of twenty thousand litas for the same repeated violation committed within five years from the imposition of the fine, were not in conflict with the Constitution; it was ruled that Paragraph 4 (wording of 20 June 2002) of Article 44 of the Law to the extent that "it does not provide for the imposition of a fine by taking account of the nature of a violation of the law and other circumstances" was in conflict with the constitutional principles of justice and a state under the rule of law.

43. In this context, while assessing the sanction—a monetary fine—established in Paragraph 2 (wordings of 9 March 2004 and 25 April 2006) of Article 34 of the Law for the violations of law specified in Paragraph 17 (wordings of 9 March 2004 and 25 April 2006) of Article 34 of the Law, it should be noted that its bottom and top levels—"from one thousand litas to eighty thousand litas"—are broad and they allowed differentiating the monetary fines imposed upon the economic subjects which committed corresponding violations and which were brought to legal liability, as well as individualising the said fines taking account of the nature of the violation of law, its extent, the circumstances mitigating liability and other significant circumstances and following the principles of justice and reasonableness. It also needs to be noted that the bottom level of this sanction—one thousand litas—should not be regarded as strict, in particular when one takes account of the fact for what violations of law this sanction was established and of the fact what socially significant

objectives were sought by the legislature by means of this legal regulation.

44. Thus, while deciding whether under Article 41 (wording of 9 March 2004), the court has the possibility, while considering the complaints of the economic subjects which object to the decisions, of the institutions indicated in Paragraph 1 of Article 34 of this Law regarding the imposition of the monetary fines for the violations of law specified in Paragraph 17 (wordings of 9 March 2004 and 25 April 2006) of Article 34 of the Law, to take account of the nature of the violation of law, its extent, the circumstances mitigating liability and other significant circumstances, and while following the criteria of justice and reasonableness, to impose a smaller fine than that established in the Law, because the imposed monetary fine may be obviously too big —disproportionate (inadequate) to the violation of law—and, thus, unfair, it needs to be held that the fact that the court, while considering the complaints of the economic subjects which object to the decisions, of the institutions indicated in Paragraph 1 of Article 34 of this Law regarding the imposition of the monetary fines for the violations of law specified in Paragraph 17 (wordings of 9 March 2004 and 25 April 2006) of Article 34 of the Law, under Paragraph 1 (wording of 9 March 2004) of Article 41 of the Law, could not impose a smaller fine than the minimum fine established in Paragraph 2 (wordings of 9 March 2004 and 25 April 2006) of Article 34 of the Law, does not mean that the powers of the court to implement justice were restricted—these powers of the court were not restricted because, as mentioned before, the bottom and top levels—"from one thousand litas to eighty thousand litas"—of the monetary fines for the violations of law specified in Paragraph 17 (wordings of 9 March 2004 and 25 April 2006 of Article 34 of the Law) are broad and allowed differentiating the monetary fines imposed upon the economic subjects which committed the corresponding violations and which are brought to legal liability, as well as individualising the said fines taking account of the nature of the violation of law, its extent, the circumstances mitigating liability and other significant circumstances and following the principles of justice and reasonableness, in addition, the bottom level of this sanction—one thousand litas—should not be regarded as strict, in particular when taking account of the fact for what violations of law this sanction was established and of the fact, what socially significant objectives were sought by the legislature by means of this legal regulation.

Thus, there is no ground to make a presumption that the legal regulation established in Article 41 (wording of 9 March 2004) of the Law, in this aspect, would deviate from the imperatives of justices and a state under the rule of law which are enshrined in the Constitution, and that it would violate the provisions of Article 109 of the Constitution.

45. In this respect the discussed legal situation is not analogous to the legal situation which was considered in the constitutional justice case in which the Constitutional Court's ruling of 3 November 2003 was adopted: in the said ruling of the Constitutional Court, the provisions of the

Law on Tobacco Control which enshrined the monetary fines of strictly defined sizes—five thousand litas, twenty thousand litas and fifty thousand litas—as well as monetary fines, the established minimum sizes whereof were substantially larger than in Paragraph 2 (wordings of 9 March 2004 and 25 April 2006) of Article 34 of the Law on Alcohol Control considered in this constitutional justice case—from three to five thousand litas, from five to ten thousand litas and from ten to thirty thousand litas—were ruled to be in conflict with the Constitution.

46. However, another sanction—abolishment of the validity of the licence (which also implies non-issuing of a new licence (for the established time))—for the said violations of law specified in Paragraph 17 (wordings of 9 March 2004 and 25 April 2006) of Article 34 of the Law was problematic with regard to the compliance with Article 109 of the Constitution and constitutional principles of justice and a state under the rule of law.

47. The provision of the official constitutional doctrine (of the Constitutional Court's ruling of 3 November 2005) quoted in this ruling of the Constitutional Court that, in itself (without an assessment of the character, danger (gravity), the scale and other features of a certain violation of law) the consolidation of strict (to violators of law) sanctions *(inter alia,* big monetary fines) for violations of the requirements of production, circulation and consumption of tobacco and its products cannot be construed as unfair or inadequate to the respective violation of law should be applied not only to big monetary fines, but also to other sanctions, as well as to the so-called prohibition sanctions which, as it has been held in this ruling of the Constitutional Court, are also preventive measures. It has been mentioned that the same requirements of justice, proportionality and other requirements are applied to preventive measures as to "usual" punishments or administrative penalties, as well as that the compliance of preventive measures established in various laws with the Constitution has been a matter of investigation in previous constitutional justice cases considered by the Constitutional Court.

48. It is obvious that the abolishment of the validity of the licence (and non-issuing a new licence (for the established time) which follows it) is a strict sanction and a strict preventive measure, because it makes an essential negative impact on the property and economic situation of that economic subject: it is removed (for the established time) from the market of trade in alcoholic products—freedom of its economic activity and its rights of ownership are limited. It has been mentioned that it is removed from the market because of the fact that at that time when it was still the participant of that market, it violated the essential conditions of being in that market (the conditions which, doubtless to say, were known and understood by that participant)—it did not comply with the imperative requirements of law; it is considered that if such economic subject was permitted to continue being a participant of the market, a threat would arise that the competition in that market will become unfair, and a threat would arise to the rights of the consumers and other

persons, one would harm various values which are consolidated in, and protected and defended by the Constitution and one would harm the public interest; the violations of the requirements of production, bringing in, import, export, trade and consumption of alcoholic products may create preconditions for harming human health, public order and security of members of society and economic interests of the state. It has also been mentioned that it is understandable and reasonable that the state takes the measures, also providing for the corresponding prohibition sanctions in the laws, so that the corresponding market, especially such for which the particular state regulation regime is applied, would be protected from such participants of the market which, while being in that market, acted not according to its rules, but in breach of the rules.

It has also been mentioned that there are no legal arguments which would allow stating that for such violations of law as those specified in Paragraph 17 (wordings of 9 March 2004 and 25 April 2006) of Article 34 of the Law, one could establish only the monetary fine, while the sanction such as the abolishment of the validity of the licence (after Article 34 of the Law, *inter alia,* Paragraph 17 thereof, was set forth in its wording of 25 April 2006—in general or only in a certain place) and non-issuance of a new licence for five years (after Article 34 of the Law, *inter alia,* Paragraph 17 thereof, was set forth in its wording of 25 April 2006—for one or five years) from the day of the abolishment of the validity of the licence could not be established.

Therefore, it needs to be held that the sanction established in Paragraph 17 (wordings of 9 March 2004 and 25 April 2006) of Article 34 of the Law—the abolishment of the validity of the licence and non-issuance of a new licence (for a certain time)—which had to be applied to the violator of law—an economic subject—together with another sanction established in this paragraph—a monetary fine—was undoubtedly constitutionally grounded: freedom of the economic activity and the right of ownership of the corresponding violator of law (which, as mentioned before, are not absolute) were restricted in an attempt to protect and defend other constitutional values and the public interest.

49. On the other hand, as mentioned before, under the Law, the validity of the licence had to be abolished by the institution which has the powers to issue such licences. It has also been mentioned that the abolishment of the validity of the licence and non-issuance of a new licence had to be applied only in the case if it had been established that the economic subject committed the corresponding violation of law—it did not comply with the imperative requirements of law—and that violator of law—an economic subject—was punished for that by imposing a monetary fine (from which it could not be exempted). It has also been mentioned that, under Article 41 (wording of 9 March 2004) of the Law, a complaint can be lodged against the decision regarding the imposition of the said monetary fine with a court, and the court had the powers to abolish such decision if it were adopted without the ground established in the Law, but it did not have the powers

to exempt the violator of law from the fine—it could only decide that the said fine had to be reduced if such a decision was grounded on the Law; thus, the way was paved to the abolishment of the licence which followed the imposition of the said monetary fine.

50. It needs to be held that, while deciding regarding the administrative liability of the economic subject (the application of the "economic sanctions" to the economic subject) which does not agree with the decisions of the institutions indicated in Paragraph 1 of Article 34 of this Law regarding the imposition of the monetary fines for the violations of law (which imply, as mentioned before, that the licence held by the corresponding economic subject has to be revoked and that the new licence cannot be issued for the time period defined in the Law) specified in Paragraph 17 (wordings of 9 March 2004 and 25 April 2006) of Article 34 of the Law, the court did not have the powers to decide about what had to be the whole extent of the liability to be applied to that concrete violator of law—an economic subject—for the corresponding violation of law.

Therefore, it is of essential importance whether under Article 41 (wording of 9 March 2004) of the Law, specified in Paragraph 17 (wordings of 9 March 2004 and 25 April 2006) of Article 34 of the Law, the economic subjects which object to the decisions of the institutions which have the powers to abolish the validity of the licences for the violations of law specified in Paragraph 17 (wordings of 9 March 2004 and 25 April 2006) of Article 34 of the Law may lodge a complaint against such decisions with a court and whether the court, even in the case when such violation of the Law was committed for which the abolishment of the validity of the licence is established, has the possibility of taking account of the nature of the violation of law, its extent, the circumstances mitigating liability and other significant circumstances, and while following the criteria of justice and reasonableness, to decide that the said prohibition sanction has not to be applied because due to certain very important circumstances it is obviously disproportionate (inadequate) to the committed violation of law, thus, unfair.

51. It has been mentioned that, under Paragraph 1 (wording of 9 March 2004) of Article 41 of the Law, economic subjects, which object to the decisions, of the institutions indicated in Paragraph 1 of Article 34 of this Law regarding application of economic sanctions shall have the right to lodge a complaint against the decision with a court within a month's period from the delivery of the decision to them according to the procedure established by the Law on the Proceedings of Administrative Cases. This provision means that the said economic subjects have the right to lodge a complaint with a court only against the decisions of the institutions indicated in Paragraph 1 of Article 34 of this Law regarding the imposition of the monetary fine. It needs to be noted that neither Paragraph 1 nor Paragraph 2 (wording of 9 March 2004) of Article 41 of the Law prescribe that the economic subjects would have the right to lodge complaints against decisions of the corresponding institutions regarding the abolishment of the licence.

52. On the other hand, under Paragraph 1 of Article 5 of the Law on the Proceedings of Administrative Cases, every interested subject shall be entitled to apply to the court, in the manner prescribed by law, for the protection of his infringed or contested right or interest protected under law; under Paragraph 1 (wordings of 19 September 2000 and 7 June 2007) of Article 22 of this law, persons as well as other subjects of public administration, including state and municipality public administration employees, officers and heads of establishments shall have the right to file a complaint (petition) against an administrative act adopted by a subject of public or internal administration or against the act (failure to act) of the above subjects if they believe that their rights or interests protected by law have been infringed.

53. However, as mentioned before, because of the fact that in respect of the Law on the Proceedings of Administrative Cases, the Law on Alcohol Control is *lex specialis*, the court, while considering the received complaint against the decision to abolish the validity of the licence subsequent to Paragraph 17 (wordings of 9 March 2004 and 25 April 2006) of Article 34 of the Law on Alcohol Control, does not have the powers to decide that this sanction (for the committed corresponding violations of law) has not to be applied even in those cases when due to certain very important circumstances it is obviously disproportionate (inadequate) to the committed violation of law, thus, unfair.

Thus, the consideration of such a case in court would be only formal, therefore, the right of the corresponding person to apply to court while disputing the decision to abolish the validity of the licence under Paragraph 17 (wordings of 9 March 2004 and 25 April 2006) of Article 34 of the Law on Alcohol Control would be also formal.

54. It has been mentioned that the constitutional concept of justice implies not only formal and nominal justice administered by the court, not only an outward appearance of justice administered by the court, but, most importantly, such court decisions (other final acts of the court), which by their content are not unfair; the justice administered only formally by the court is not the justice which is consolidated in and protected and defended by the Constitution.

55. In this context, it needs to be noted that Article 41 (wording of 9 March 2004) of the Law is titled "Lodging complaints against decisions regarding application of economic sanctions", particularly this article is designed to regulate the relations linked to lodging complaints against the "economic sanctions" established in Article 34 (wordings of 9 March 2004 and 25 April 2005) of the Law.

56. The fact that Article 41 (wording of 9 March 2004) of the Law does not prescribe that economic subjects have the right to lodge complaints against decisions regarding the abolishment of the validity of the licence for the violations specified in under Paragraph 17 (wordings of 9 March 2004 and 25 April 2006) of Article 34 of the Law, as well as that Article 41 (wording of 9 March

2004) of the Law does not establish the powers of the court to decide that this sanction (for the committed corresponding violations of law) has not to be applied even in those cases when due to the certain very important circumstances it is obviously disproportionate (inadequate) to the committed violation of law, thus, unfair, does not correspond with the provisions of Paragraph 1 of Article 30 and Paragraph 1 of Article 109 of the Constitution, and with the constitutional imperatives of justice and a state under the rule of law.

57. It also needs to be noted that, as it has been held in this ruling of the Constitutional Court, the prohibition sanction established in Paragraph 17 (wordings of 9 March 2004 and 25 April 2006) of Article 34 of the Law—the abolishment of the validity of the licence and non-issuance of a new licence which had to be applied to the violator of law—an economic subject—together with another sanction established in this paragraph—a monetary fine—was undoubtedly constitutionally grounded.

Therefore, it should be emphasised that the powers of the court to decide whether the corresponding violator of law—an economic subject—has to be applied the monetary fine, but not the abolishment of the validity of the licence (under Paragraph 17 (wordings of 9 March 2004 and 25 April 2006) of Article 34 of the Law), i.e. the powers of which stem from the Constitution, but which are not established in Article 41 (wording of 9 March 2004) of the Law, does not at all mean that the court may disregard the principled provision that the said person, at the time when he was a participant of the market of trade (for which the particular state regulation regime is applied) in alcoholic products, violated the essential conditions of being in that market (the conditions which, doubtless to say, were known and understood by that participant)—it did not comply with the imperative requirements of law, and the principled provision that this market must be protected from such participants of the market which, being in that market, acted not according to its rules, but in breach of the rules. Thus, such cases, when the said prohibition sanction does not have to be applied, may only be very rare and exceptional ones.

It is obvious that in every such case, in the corresponding court act one must clearly and rationally argue what values, which are enshrined in, and protected and defended by the Constitution, would be violated by the abolishment of the validity of the licence. Otherwise, one would have to hold that the court decision ignores the public interest. Among other things, one would have to hold that the fact is ignored that, as mentioned before, under the Constitution, the state has to seek to protect and defend the person and society from crimes and other dangerous violations of law and to be able to do it efficiently.

It would not be the justice that is enshrined in the Constitution.

58. Thus, the powers of the court to decide whether the corresponding violator of law—an economic subject—has to be applied the monetary fine, but not the abolishment of the validity of

the licence (under Paragraph 17 (wordings of 9 March 2004 and 25 April 2006) of Article 34 of the Law), which stem from the Constitution, are limited—the court, taking account of the nature of the violation of law, its extent, the circumstances mitigating the liability and other significant circumstances and following the principles of justice and reasonableness, may decide that the validity of the licence does not have to be abolished in such cases when due to certain very important circumstances it is obviously disproportionate (inadequate) to the committed violation of law, thus, unfair.

59. It also needs to be noted that taking account of the indivisibility and integrity of the prohibition sanction—abolishment of the validity of the licence and non-issuance of a new licence — established in Paragraph 17 (wordings of 9 March 2004 and 25 April 2006) of Article 34 of the Law which has been discussed in this ruling of the Constitutional Court, there is no legal ground to state that, purportedly, the court, which has to have the powers, while taking account of the nature of the violation of law, its extent, the circumstances mitigating the liability and other significant circumstances and following the principles of justice and reasonableness, may decide that the validity of the licence does not have to be abolished in such cases when due to certain very important circumstances it is obviously disproportionate (inadequate) to the committed violation of law, thus, unfair, may also have the powers to separately decide regarding the shortening (or even total non-establishment of such term) of the time period, in which the new licence would not be issued to the corresponding economic subject. It has been held in this ruling of the Constitutional Court that the abolishment of the validity of the licence is not an end in itself, and it would hardly have any sense, if the violator of law—an economic subject—whose licence was revoked for non-compliance with the imperative requirements of law, could immediately get the same licence anew, as well as that the purpose of the discussed prohibition sanction as a whole is to remove (for the established time) from the market of trade in alcoholic products its former participant which violated the essential conditions of being in that market (the conditions which, doubtless to say, were known and understood by that participant).

Thus, the alleged powers of the court to separately decide regarding the shortening (or even total non-establishment of such term) of the time period, in which a new licence would not be issued to the corresponding economic subject, may not be constitutionally grounded.

Therefore, while deciding that one or a few violations of law specified in Paragraph 17 (wordings of 9 March 2004 and 25 April 2006) of Article 34 of the Law have been committed and that the violator of law—an economic subject (i.e. an enterprise)—must be punished for it by imposing a monetary fine and by revoking the licence held by it, the court at the same time decides that a new licence may not be issued for that economic subject for the time period defined in the Law.

60. It has been mentioned that the legal regulation established in Paragraph 17 (wording of 25 April 2006) of Article 34 of the Law has been amended and/or supplemented by the Law on Amending and Supplementing Articles 2, 7, 11, 12, 16, 17, 18, 26, 29, 33 and 35 of the Law on Alcohol Control which was adopted by the Seimas on 21 June 2007.

It has also been mentioned that Article 11 of the Law on Amending and Supplementing Articles 2, 7, 11, 12, 16, 17, 18, 26, 29, 33 and 35 of the Law on Alcohol Control, *inter alia,* amended Paragraph 2 (wording of 25 April 2006) of Article 34 of the Law and expanded the list of the violations of law for which the legal persons and branches and representations of foreign legal persons have to be imposed a fine, in addition, it reduced the maximum size of the fine (the top limit) from eighty thousand to fifty thousand litas.

However, Article 41 of the Law has not been amended—it remained in its wording of 9 March 2004.

61. Therefore, it needs to be held that Article 41 (wording of 9 March 2004) of the Law does not prescribe that the economic subjects have the right to lodge complaints against decisions regarding the abolishment of the validity of the licence also for the violations specified in Paragraph 17 (wordings of 9 March 2004 and 25 April 2006) of Article 34 of the Law, as well as that Article 41 (wording of 9 March 2004) of the Law does not establish the powers of the court to decide that this sanction (for the committed corresponding violations of law) has not to be applied even in those cases when due to the certain very important circumstances it is obviously disproportionate (inadequate) to the committed violation of law, thus, unfair.

62. Taking account of the arguments set forth, the conclusion should be drawn that Article 41 (wording of 9 March 2004) of the Law, to the extent that it does not provide for the possibility for the enterprises, to which the validity of the licence was abolished for the violations of law specified in Paragraph 17 (wordings of 9 March 2004 and 25 April 2006) of Article 34 of this law, to lodge complaints against decisions regarding the imposition of the said sanction with a court, is in conflict with Paragraph 1 of Article 30 of the Constitution and with the constitutional principles of justice and a state under the rule of law, and to the extent that it does not provide for the possibility for the court, while taking account of the nature of the violation of law, its extent, the circumstances mitigating the liability and other significant circumstances and following the principles of justice and reasonableness, to decide that this sanction—the abolishment of the validity of the licence—does not have to be applied to the enterprise for the violations of law established in Paragraph 17 (wordings of 9 March 2004 and 25 April 2006 and 21 June 2007) of Article 34 of this law, because due to certain very important circumstances it is obviously disproportionate (inadequate) to the committed violation of law, thus, unfair, is in conflict with Paragraph 1 of Article 109 of the Constitution, and with the constitutional principles of a state under

the rule of law.

63. Taking account of the arguments set forth, the conclusion should also be drawn that Paragraph 17 (wordings of 9 March 2004 and 25 April 2006) of Article 34 of the Law on Alcohol Control was not in conflict with Paragraph 5 of Article 31 and Paragraph 1 of Article 109 of the Constitution, and with the constitutional principles of justice and a state under the rule of law.

64. It needs to be noted that, as it has been held in this ruling of the Constitutional Court, it is not the provisions of Paragraph 17 (wordings of 9 March 2004 and 25 April 2006) of Article 34 of the Law on Alcohol Control, but Article 41 (wording of 9 March 2004) (to the specified extent) of the Law that is in conflict with the Constitution, because, as mentioned before, namely Article 41 (wording of 9 March 2004) of the Law is designed to regulate the relations linked to lodging complaints against the "economic sanctions" established in Article 34 (wordings of 9 March 2004 and 25 April 2005) of the Law with a court, therefore, namely the said article should establish the powers of the court to decide whether the corresponding violator of law—an economic subject—has to be applied the monetary fine, but not the abolishment of the validity of the licence (under Paragraph 17 (wordings of 9 March 2004 and 25 April 2006) of Article 34 of the Law) in such cases when due to certain very important circumstances this sanction is obviously disproportionate (inadequate) to the committed violation of law, thus, unfair. Therefore, the fact that this Law does not contain any provisions which do not assign the aforesaid disputes (cases) for the jurisdiction of courts also in other parts of this Law, is not of crucial importance.

In this respect, the discussed legal situation is not analogous to the legal situation which was considered in the constitutional justice case in which the Constitutional Court's ruling of 3 November 2003 was adopted, in which namely those provisions of the Law on Tobacco Control were ruled to be in conflict with the Constitution, which enshrined the "economic sanctions". On the other hand, the said law explicitly consolidated the right of the persons who did not agree with the "decision to apply the economic sanction", to lodge a complaint, within the established term, against it with a court according to the procedure established by the Law on the Proceedings of Administrative Cases.

III

On the compliance of Items 28.5 and 51.5 (wording of 20 May 2004) of the Rules of Licensing the Wholesale and Retail Trade in Alcoholic Products as approved by the Government Resolution (No. 618) "On Approving the Rules of Licensing the Wholesale and Retail Trade in Alcoholic Products and the Rules of the Retail Trade in Alcoholic Beverages at the Enterprises of Trade and Public Catering" of 20 May 2004 with Paragraph 5 of Article 31 and Paragraph 1 of Article 109 of the Constitution, and with the constitutional principles of a state under the rule of law and justice.

1. In this constitutional justice case, one impugns, *inter alia,* the compliance of the provisions of Items 28.5 and 51.5 (wording of 20 May 2004) of the Rules of Licensing the Wholesale and Retail Trade in Alcoholic Products as approved by the Government Resolution (No. 618) “On Approving the Rules of Licensing the Wholesale and Retail Trade in Alcoholic Products and the Rules of the Retail Trade in Alcoholic Beverages at the Enterprises of Trade and Public Catering” of 20 May 2004 with the Constitution.

2. On 20 May 2004, the Government adopted the Resolution (No. 618) “On Approving the Rules of Licensing the Wholesale and Retail Trade in Alcoholic Products and the Rules of the Retail Trade in Alcoholic Beverages at the Enterprises of Trade and Public Catering” which came into force on 26 May 2004. Item 1 of this resolution approved the Rules of Licensing the Wholesale and Retail Trade in Alcoholic Products.

3. The Rules (wording of 20 May 2004), *inter alia,* prescribed: “The licences shall not be issued, if <…> 28.5. the validity of the licence was abolished under the requirements established in Items 51.5 <…> of these Rules (the licence shall not be issued for five years from the day of the abolishment of the validity of the licence)”, “The validity of the licence shall be abolished, if: <…> 51.5. The holder of the licence does not follow the requirements of Items 1, 2, 4, 5, 8 and 9 of Paragraph 1 and Items 1, 2, 4 and 7 of Paragraph 2 of Article 17 of the Republic of Lithuania’s Law on Alcohol Control”.

4. On 17 October 2006, the Government the adopted Resolution (No. 1008) “On Amending the Resolution of the Government of the Republic of Lithuania (No. 618) ‘On Approving the Rules of Licensing the Wholesale and Retail Trade in Alcoholic Products and the Rules of the Retail Trade in Alcoholic Beverages at the Enterprises of Trade and Public Catering’ of 20 May 2004” (hereinafter referred to as government resolution No. 1008 of 17 October 2006) which came into force on 20 October 2006. Government resolution No. 1008 of 17 October 2006 has amended the following:

– Item 2.9 thereof supplemented Item 28.5 (wording of 20 May 2004) of the Rules and it prescribed: “The licences shall not be issued, if <…> 28.5. the validity of the licence to engage in wholesale in alcoholic products was abolished under the requirements established in Items 51.5 <…> of these Rules (the licence shall not be issued for five years from the day of the abolishment of the validity of the licence)”;

– Item 2.17 thereof amended Item 51.5 (wording of 20 May 2004) of the Rules and set it forth in its new wording; it was prescribed: “The validity of the licence shall be abolished, if: <…> 51.5. The holder of the licence does not follow the requirements of Items 1, 2, 4, 8 and/or 9 of Paragraph 1 and Items 2, 4 and/or 7 of Paragraph 2 of Article 17 of the Republic of Lithuania’s Law on Alcohol Control”.

5. It has been mentioned that Paragraph 17 (wording of 9 March 2004) of Article 34 of the Law on Alcohol Control established the following: "for enterprises, having licences to engage in the retail trade in alcoholic products which do not comply with the requirements of Items 2, 4, 8 and/or 9 of Paragraph 1 and Items 1, 2, 4 and 7 of Paragraph 2 of Article 17 of this Law, the validity of the licences to engage in the retail trade in alcoholic products in the place where the violation was established shall be abolished and a new licence is not issued for one year from the day of the abolishment of the validity of the licence", while after this article, *inter alia,* Paragraph 17 thereof was set forth in its wording of 25 April 2006, this paragraph established the following: "For enterprises, having licences to produce alcoholic products or to engage in the wholesale in alcoholic products which do not comply with the requirements of Items 2, 4, 8 and/or 9 of Paragraph 1 and Items 2, 4 and 7 of Paragraph 2 of Article 17 of this Law, the validity of the licences shall be abolished and a new licence is not issued for five years from the day of the abolishment of the validity of the licence. For enterprises having the licence to engage in the retail trade in alcoholic products which do not comply with the requirements of Items 2, 4, 8 and/or 9 of Paragraph 1 and Items 2, 4 and 7 of Paragraph 2 of Article 17 of this Law, the validity of the licences to engage in the retail trade in alcoholic products in the place where the violation was established shall be abolished and a new licence is not issued for one year from the day of the abolishment of the validity of the licence."

6. In this ruling of the Constitutional Court, it has been held that Paragraph 17 (wording of 9 March 2004) of Article 34 of the Law was not in conflict with the Constitution.

7. The legal regulation established in Items 28.5 and 51.5 (wording of 20 May 2004) of the Rules implemented Paragraph 17 (wording of 9 March 2004) of Article 34 of the Law was analogous to it.

8. On the grounds of the arguments, analogous to those following which it has been held in this ruling of the Constitutional Court that that Paragraph 17 (wording of 9 March 2004) of Article 34 of the Law was ruled to be not in conflict with the Constitution, it should be held that Items 28.5 and 51.5 (wording of 20 May 2004) of the Rules of Licensing the Wholesale and Retail Trade in Alcoholic Products as approved by the Government Resolution (No. 618) "On Approving the Rules of Licensing the Wholesale and Retail Trade in Alcoholic Products and the Rules of the Retail Trade in Alcoholic Beverages at the Enterprises of Trade and Public Catering" of 20 May 2004 were not in conflict with the Constitution, either.

IV

On the compliance of Item 51.6 (wording of 20 May 2004) of the Rules of Licensing the Wholesale and Retail Trade in Alcoholic Products as approved by the Government Resolution (No. 618) "On Approving the Rules of Licensing the Wholesale and Retail Trade in Alcoholic

Products and the Rules of the Retail Trade in Alcoholic Beverages at the Enterprises of Trade and Public Catering" of 20 May 2004 with Paragraph 5 of Article 31, Article 46 and Paragraph 1 of Article 109 of the Constitution, with the constitutional principles of a state under the rule of law and justice, and with Paragraph 17 (wordings of 9 March 2004 and 25 April 2006) of Article 34 of the Law.

1. In this constitutional justice case, one impugns, *inter alia,* the compliance of the provisions of Item 51.6 (wording of 20 May 2004) of the Rules of Licensing the Wholesale and Retail Trade in Alcoholic Products as approved by the Government Resolution (No. 618) "On Approving the Rules of Licensing the Wholesale and Retail Trade in Alcoholic Products and the Rules of the Retail Trade in Alcoholic Beverages at the Enterprises of Trade and Public Catering" of 20 May 2004 with the Constitution and the Law on Alcohol Control.

2. The Rules (wording of 20 May 2004), *inter alia,* prescribed: "The validity of the licence is abolished if: <…> 51.6. the holder of the licence does not follow the requirements established in any of Items 33, 34, 37, 38, 39, 40, 41 and 42 of the Rules".

3. It is obvious from the petition of the Vilnius Regional Administrative Court, a petitioner, and from the material of the administrative case in which the ruling to apply to the Constitutional Court was adopted that the dispute decided in the said administrative case is related to the application of Item 51.6 of the Rules, when the holder of the licence does not follow the requirements established in Item 34 (wording of 20 May 2004) of the Rules, therefore, the compliance of Item 51 (wording of 20 May 2004) of the Rules with the Constitution and the provisions of the Law on Alcohol Control will be investigated to the extent that it prescribes: "The validity of the licence is abolished if: <…> 51.6. the holder of the licence does not follow the requirements established in any of Items <…> 34 <…> of the Rules."

4. Item 34 (wording of 20 May 2004) of the Rules prescribed: "The enterprise, having the licence, may engage in the activity specified in the licence and store the alcoholic products specified in the licence only in the place which is specified in the licence."

5. Government resolution No. 1008 of 17 October 2006 has amended the following:

– Item 2.18 thereof amended Item 51.6 (wording of 20 May 2004) of the Rules and it was prescribed: "The validity of the licence is abolished if: <…> 51.6. the holder of the licence does not follow the requirements established in any of these Items <…> Section 1 of Item 34 <…> of the Rules.";

–Item 2.12 thereof supplemented Item 34 (wording of 20 May 2004) of the Rules with a new second section, in which it was prescribed: "The enterprise, having the licence to engage in retail trade in alcoholic beverages, must observe the time for trade in alcoholic beverages which is specified in the licence."

6. On 2 May 2007, the Government adopted the Resolution (No. 426) "On Amending the Resolution of the Government of the Republic of Lithuania (No. 618) 'On Approving the Rules of Licensing the Wholesale and Retail Trade in Alcoholic Products and the Rules of the Retail Trade in Alcoholic Beverages at the Enterprises of Trade and Public Catering' of 20 May 2004" which came into force on 11 May 2007. Item 3 of the Government Resolution (No. 426) "On Amending the Resolution of the Government of the Republic of Lithuania (No. 618) 'On Approving the Rules of Licensing the Wholesale and Retail Trade in Alcoholic Products and the Rules of the Retail Trade in Alcoholic Beverages at the Enterprises of Trade and Public Catering' of 20 May 2004" of 2 May 2007 supplemented Item 34 (wording of 17 October 2006) of the Rules with a new third section, in which it was prescribed: "In such cases when the municipal council, following Paragraph 9 of Article 18 of the Republic of Lithuania's Law on Alcohol Control, limits the time for trade in alcoholic beverages for the enterprise and that time differs from one specified in the licence, the enterprise, upon receiving a letter from the executive institution of the municipality with a written explanation about the limitation which was established by the municipal council, must follow this limitation as from the day of receipt of this letter, unless the municipal council specifies a later deadline of coming into force of this decision."

7. When Item 34 of the Rules was supplemented with the second and third sections, the legal regulation which had been established in the first section of this item was not amended and remained the same as it had been set forth in its wording of 20 May 2004.

8. While deciding, subsequent to the petition of the Vilnius Regional Administrative Court, a petitioner, whether the provision "the validity of the licence is abolished if: <…> 51.6. the holder of the licence does not follow the requirements established in any of Items <…> 34 <…> of the Rules" of Item 51 (wording of 20 May 2004) of the Rules is not in conflict with the Constitution and Paragraph 17 (wordings of 9 March 2004 and 25 April 2006) of Article 34 of the Law on Alcohol Control, it needs to be held that in this law, as well as in its Paragraph 17 (wording of 9 March 2004 with subsequent amendments) of Article 34 thereof, in which the grounds for abolishment of the validity of the licences are established, it has never been and it is not prescribed that the validity of the licence of the enterprise, having the licence and engaging in the activity specified in that licence or storing the alcoholic products specified in the licence only in the place which is specified in the licence, has to be abolished.

9. The fact that the validity of the licence of the enterprise, having the licence and engaging in the activity specified in that licence or storing the alcoholic products specified in the licence only in the place which is specified in the licence, has to be abolished does not stem also from Article 2.78 of the CC, to which, the representatives of the Government, the party concerned, referred in their explanations to the Constitutional Court. Paragraph 1 of Article 2.78 titled "The rules of

licensing" of the CC prescribes that the Government approves licensing requirements for every licensed sphere of activities provided by law except as otherwise provided by other laws, Paragraph 2—what is indicated in the licensing rules *(inter alia,* cases of refusal to issue a licence (Item 8), cases and procedure for the revocation and withdrawal of a licence (Item 11)), and Paragraph 3—that the rules of licensing may provide for other requirements and a different procedure. These provisions of Article 2.78 of the CC may not be construed, as, purportedly, allowing the Government, in its legal acts, to establish also such—totally new—grounds for abolishment of the validity of the licences which are not established by law.

10. Thus, the impugned ground of the abolishment of the validity of the licence was (and is) established only by means of a substatutory legal act—the government resolution.

11. In this ruling of the Constitutional Court, it has been held that by the abolishment of the validity of the licence, negative impact is made on the property and economic situation of that economic subject which is brought to legal liability, its ownership right and freedom of economic activity are limited. It has also been held that freedom of economic activity of a person may be limited only by law but not by means of a substatutory legal act.

12. Taking account of the arguments set forth, the conclusion should be drawn that the provision "the validity of the licence is abolished if: <…> 51.6. the holder of the licence does not follow the requirements established in any of Items <…> 34 <…> of the Rules" of Item 51 (wording of 20 May 2004) of the Rules of Licensing the Wholesale and Retail Trade in Alcoholic Products as approved by the Government Resolution (No. 618) "On Approving the Rules of Licensing the Wholesale and Retail Trade in Alcoholic Products and the Rules of the Retail Trade in Alcoholic Beverages at the Enterprises of Trade and Public Catering" of 20 May 2004 was in conflict with Paragraph 17 (wording of 9 March 2004 and 25 April 2006) of Article 34 of the Law on Alcohol Control.

It should also be held that the provision (only the reference in it is made not to the first paragraph of Item 34, but to the second) "the validity of the licence is abolished if: <…> 51.6. the holder of the licence does not follow the requirements established in any of these Items <…> Section 1 of Item 34 <…> of the Rules" of this item (wording of 17 October 2006), and the same provision of this item (wording of 2 May 2007) (only therein reference is made not to Section 1, but Section 2 of Item 34), were in conflict with Paragraph 17 (wording of 25 April 2006) of Article 34 of the Law on Alcohol Control and is in conflict with Paragraph 17 of the said article (wording of 21 June 2007).

13. It also needs to be held that these provisions also were (are) in conflict with Item 2 of Article 94 of the Constitution whereby the Government shall execute laws, as well as with the constitutional principles of a state under the rule of law and justice.

14. Having held that, in this constitutional justice case the Constitutional Court will not further investigate the compliance of these provisions with Paragraph 5 of Article 31, Article 46 and Paragraph 1 of Article 109 of the Constitution.

V

On the compliance of Paragraph 8 (wording of 9 March 2004) of Article 18 of the Law on Alcohol Control with Articles 29 and 46 of the Constitution and with the constitutional principles of a state under the rule of law and the protection of legitimate expectations.

1. In this constitutional justice case, one impugns, *inter alia,* whether Paragraph 8 (wording of 9 March 2004) of Article 18 of the Law was not in conflict with the Constitution.

2. Paragraph 8 (wording of 9 March 2004) of Article 18 titled "Procedure of trade in alcoholic beverages in retail establishments and catering establishments" prescribed: "Municipal councils shall have the right to restrict or prohibit the trade in alcoholic beverages on official holidays and mass event days."

3. It is established in the Constitution that the right to self-government shall be guaranteed to administrative units of the territory of the state, which are provided for by law; it shall be implemented through corresponding municipal councils (Paragraph 1 of Article 119); for the direct implementation of the laws of the Republic of Lithuania, the decisions of the Government and the municipal council, the municipal council shall form executive bodies accountable to it (Paragraph 4 of Article 119); municipalities shall act freely and independently within their competence defined by the Constitution and laws (Paragraph 2 of Article 120).

4. It has been mentioned that, under Paragraph 3 (wording of 9 March 2004) of Article 16 titled "Licences for wholesale and retail trade in alcoholic products" (wording of 9 March 2004) of the Law, only the enterprises holding licences to engage in retail trade in alcoholic beverages shall be permitted to engage in retail trade in alcoholic beverages; licences shall be issued for an unlimited period by the executive institution of an appropriate municipality; licences to engage in seasonal retail trade in beer and alcoholic beverages, whose ethyl alcohol concentration volume does not exceed 22 %, in resorts and other recreational and tourist areas designated by the municipal councils shall be issued for the resort, recreational and tourist season period set by the municipal councils; onetime licences issued to retail establishments and catering establishments to engage in sale of alcoholic beverages, whose ethyl alcohol strength by volume is not over 13 %, at mass events, exhibitions and fairs, and also, to engage in the sale of all alcoholic beverages at exhibitions and fairs held in permanent buildings, shall be issued for no longer than the time of the event's duration. Paragraph 3 (wording of 9 March 2004) of Article 24 titled "Programmes of alcohol control" of the Law prescribes that the municipals draft, approve, fund and implement programmes of alcohol control. Under Article 30 titled "System of formulating state alcohol control

policy" (wording of 9 March 2004) of the Law, also municipal councils shall within the scope of their competence formulate and co-ordinate the state alcohol control policy; their authorisation in the area of alcohol control shall be established by this and other laws and legal acts; and under Article 31 titled "System of executive institutions in state alcohol control policy" (wording of 9 March 2004), the ministries, the Service and other state institutions, municipal executive institutions, police, and healthcare institutions shall within the scope of their competence carry on state alcohol control. Their competence within the area of alcohol control shall be established by this and other laws and legal acts.

5. Trade in alcoholic beverages is economic activity. In acts of the Constitutional Court, it has been held more than once that freedom of economic activity is not absolute; under Paragraph 3 of Article 46 of the Constitution, the state shall regulate economic activity so that it serves the general welfare of the Nation.

In this context, the following provisions of the official constitutional doctrine formulated in the Constitutional Court's acts adopted in the former constitutional justice cases should be mentioned:

– the right of the state to regulate economic activity which is consolidated in Paragraph 3 of Article 46 of the Constitution creates the constitutional preconditions for passing laws by which one reacts to a situation of national economy, the variety of and changes in the economic and social life (the Constitutional Court's rulings of 28 February 1996, 15 March 1996, 18 October 2000, 13 May 2005, and 31 May 2006); the legislature, while taking account of the importance and character of the regulated economic relations, may regulate this activity in a differentiated manner or establish certain conditions for it (the Constitutional Court's rulings of 18 October 2000 and 13 May 2005);

– individual economic activity may be limited when it is necessary to protect the interests of consumers, fair competition and the other values entrenched in the Constitution; the prohibitions provided for in the law must be reasonable, non-discriminatory and clearly formulated; the prohibition concerning freedom of economic activity of individuals must be clear in every particular case and must be designated for the protection of the values entrenched in the Constitution (the Constitutional Court's ruling of 13 May 2005); under the Constitution, it is permitted to limit the rights and freedoms of the person, as well as freedom of economic activity, if the following conditions are followed: this is done by means of legislation; the limitations are necessary in a democratic society in order to protect the rights and freedoms of other persons and values entrenched in the Constitution, as well as constitutionally important objectives; the limitations do not deny the nature and essence of the rights and freedoms; the constitutional principle of proportionality is followed (the Constitutional Court's ruling of 31 May 2006);

– no other self-government institutions, save the municipal councils, are specified in the

Constitution; the notion "self-government institutions" expresses the constitutional purpose of corresponding institutions of territorial communities of administrative units: they are institutions through which the right of self-government of respective communities is implemented (the Constitutional Court's rulings of 24 December 2002 and 13 December 2004); the legislature enjoys a broad discretion to establish by law, what functions (all or some of them to a certain extent) are assigned to municipalities; the constitutional provision that municipalities act freely and independently within their competence means also that in case certain functions are assigned to municipalities by the Constitution or laws, so the municipalities perform them to the extent that they are assigned to the latter (the Constitutional Court's ruling of 8 July 2005); in addition to the functions which belong exclusively to municipalities, they may be commissioned, by means of a law, to discharge certain state functions; thus, a more efficient connection between state power and citizens as well as democracy of administration are ensured (the Constitutional Court's ruling of 24 December 2002); the performance of certain functions of the state, speaking objectively, may not, to a certain extent, be not transferred to municipalities, as, without doing so, one could not guarantee an effective performance of such functions (the Constitutional Court's ruling of 8 July 2005).

6. In the context of the constitutional justice case at issue, it needs to be held that the legislature, especially, while taking account, *inter alia,* of universally known negative consequences which may be caused by consumption of alcohol to the human health, public order and security of members of society, as well as to other values which are protected and defended by law, (and which, as mentioned before, have been pointed out more than once in acts of the Constitutional Court), as well as of the fact that the state special regulation regime is reasonably applied to this field of activity, may, by means of a law, establish the powers of municipal councils to participate in the formation and coordination of the state alcohol control policies and the implementation thereof, *inter alia,* the legislature has the powers to limit or prohibit, in the territory of that municipality (as well as in the public catering enterprises and enterprises which engage in the retail trade), the trade in alcoholic beverages on official holidays and mass event days, which, as it is known, are related with the increased intensity and activeness of the social life, when it is necessary while seeking to attain positive universally important objectives, *inter alia,* to protect the rights and freedoms of other persons, as well as other values which are protected and defended by law.

Precisely that was done in Paragraph 8 (wording of 9 March 2004) of Article 18 of the Law.

7. It needs to be emphasised that the corresponding decisions of the municipal councils must be clearly and rationally reasoned, they may not be arbitrary and voluntaristic. It also needs to be emphasised that all limitations and prohibitions on trade in alcoholic beverages must be strictly determined in regard to time and place, the economic activity of this kind (as well as any other economic activity) may not be limited more than it is necessary in order to ensure the protected and

defended values, as, otherwise, one would disregard the constitutional principle of proportionality.

In addition, the information about the established limitations and prohibitions must be public, the subjects of law must be informed about that in advance. Otherwise, one would disregard the constitutional principle of the protection of legitimate expectations.

It also needs to be emphasised that the aforementioned limitations and prohibitions on trade in alcoholic beverages may not be selective, one may not discriminate any persons *(inter alia,* economic subjects) or grant the privileges to any persons by means of them. The impugned legal regulation does not by itself create preconditions for that.

8. While construing the legal regulation established in Paragraph 8 (wording of 9 March 2004) of Article 18 of the Law in this manner, there is no ground to state that, purportedly, it was in conflict with Article 46 of the Constitution, as well as that, purportedly, it violated the constitutional principles of the protection of legitimate expectations and equality of rights of persons.

9. It also needs to be held that there is no ground to state that, purportedly, the impugned provision in any way violated the constitutional principle of a state under the rule of law.

10. On the other hand, it should be emphasised that the fact that the legislature may by means of a law establish the powers of the municipal councils to limit or prohibit the trade in alcoholic beverages on official holidays and mass event days in the territory of that municipality (as well as in public catering enterprises and enterprises which engage in the retail trade), when it is necessary while seeking to attain positive universally important objectives, *inter alia,* to protect the rights and freedoms of other persons, as well as other values which are protected and defended by law, does not mean that such decisions of the municipal councils may not be subject to control.

In this context, it needs to be noted that it is established in the Constitution that the observance of the Constitution and the laws as well as the execution of decisions of the Government by municipalities shall be supervised by the representatives appointed by the Government (Paragraph 2 of Article 123); acts or actions of municipal councils as well as of their executive bodies and officials, which violate the rights of citizens and organisations, may be appealed in court (Article 124). In the legal system of the Republic of Lithuania, such disputes are assigned to the jurisdiction of administrative courts—specialised courts which were established under Paragraph 2 of Article 111 of the Constitution.

11. Taking account of the arguments set forth, the conclusion should be drawn that Paragraph 8 (wording of 9 March 2004) of Article 18 of the Law was not in conflict with Articles 29 and 46 of the Constitution, and with the constitutional principles of justice and the protection of legitimate expectations.

12. Paragraph 2 of Article 1 of the Law on Amending and Supplementing Articles 17 and 34 of the Law on Alcohol Control, which was adopted on 9 November 2006 by the Seimas, amended

Paragraph 8 (wording of 9 March 2004) of Article 18 of the Law on Alcohol Control by deleting the word “official” and it was prescribed that the municipal councils “shall have the right to limit or prohibit the trade in alcoholic beverages on holidays and mass event days”. The specified provision is not a matter of investigation in this constitutional justice case.

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 Paragraph 8 (wording of 9 March 2004; Official Gazette *Valstybės žinios,* 2004, No. 47-1548) of Article 18 and Paragraph 17 (wordings of 9 March 2004 and 25 April 2006, Official Gazette *Valstybės žinios,* 2004, No. 47-1548; 2006, No. 53-1928) of the Republic of Lithuania’s Law on Alcohol Control were not in conflict with the Constitution of the Republic of Lithuania.

2. To recognise that Article 41 (wording of 9 March 2004; Official Gazette *Valstybės žinios,* 2004, No. 47-1548) of the Republic of Lithuania’s Law on Alcohol Control, to the extent that it does not provide for the possibility for the enterprises, to which the validity of the licence was abolished for the violations of law specified in Paragraph 17 (wordings of 9 March 2004 and 25 April 2006) of Article 34 of this law, to lodge complaints against decisions regarding the imposition of the mentioned sanction with a court, is in conflict with Paragraph 1 of Article 30 of the Constitution of the Republic of Lithuania and with the constitutional principles of justice and a state under the rule of law, and to the extent that it does not provide for the possibility for the court, taking account of the nature of the violation of law, its extent, the circumstances mitigating the liability and other significant circumstances and following the principles of justice and reasonableness, to decide that this sanction—the abolishment of the validity of the licence—does not have to be applied to the enterprise for the violations of law established in Paragraph 17 (wordings of 9 March 2004 and 25 April 2006) of Article 34 of this law, because due to certain very important circumstances it is obviously disproportionate (inadequate) to the committed violation of law, thus, unfair, is in conflict with Paragraph 1 of Article 109 of the Constitution of the Republic of Lithuania, and with the constitutional principles of justice and a state under the rule of law.

3. To recognise that Items 28.5 and 51.5 (wording of 20 May 2004; Official Gazette *Valstybės žinios,* 2004, No. 84-3050) of the Rules of Licensing the Wholesale and Retail Trade in Alcoholic Products as approved by the Resolution of the Government of the Republic of Lithuania (No. 618) “On Approving the Rules of Licensing the Wholesale and Retail Trade in Alcoholic Products and the Rules of the Retail Trade in Alcoholic Beverages at the Enterprises of Trade and

Public Catering" of 20 May 2004 were not in conflict with the Constitution of the Republic of Lithuania.

4. To recognise that the provision "the validity of the licence is abolished if: <…> 51.6. the holder of the licence does not follow the requirements established in any of Items <…> 34 <…> of the Rules" of Item 51 (wording of 20 May 2004; Official Gazette *Valstybės žinios,* 2004, No. 84-3050) of the Rules of Licensing the Wholesale and Retail Trade in Alcoholic Products as approved by the Resolution of the Government of the Republic of Lithuania (No. 618) "On Approving the Rules of Licensing the Wholesale and Retail Trade in Alcoholic Products and the Rules of the Retail Trade in Alcoholic Beverages at the Enterprises of Trade and Public Catering" of 20 May 2004 was in conflict with Item 2 of Article 94 of the Constitution of the Republic of Lithuania, with the constitutional principles of a state under the rule of law and justice and with Paragraph 17 (wordings of 9 March 2004 and 25 April 2006) of Article 34 of the Republic of Lithuania's Law on Alcohol Control.

5. To recognise that the provision "the validity of the licence is abolished if: <…> 51.6. the holder of the licence does not follow the requirements established in any of these Items <…> Section 1 of Item 34 <…> of the Rules" of Item 51 (wording of 17 October 2006; Official Gazette *Valstybės žinios,* 2006, No. 111-4221) of the Rules of Licensing the Wholesale and Retail Trade in Alcoholic Products as approved by the Resolution of the Government of the Republic of Lithuania (No. 618) "On Approving the Rules of Licensing the Wholesale and Retail Trade in Alcoholic Products and the Rules of the Retail Trade in Alcoholic Beverages at the Enterprises of Trade and Public Catering" of 20 May 2004 was in conflict with Item 2 of Article 94 of the Constitution of the Republic of Lithuania, with the constitutional principles of a state under the rule of law and justice and with Paragraph 17 (wording of 25 April 2006) of Article 34 of the Republic of Lithuania's Law on Alcohol Control.

6. To recognise that the provision "the validity of the licence is abolished if: <…> 51.6. the holder of the licence does not follow the requirements established in any of these Items <…> Section 1 of Item 34 <…> of the Rules" of this Item 51 (wording of 2 May 2007, Official Gazette *Valstybės žinios,* 2007, No. 50-1923) of the Rules of Licensing the Wholesale and Retail Trade in Alcoholic Products as approved by the Resolution of the Government of the Republic of Lithuania (No. 618) "On Approving the Rules of Licensing the Wholesale and Retail Trade in Alcoholic Products and the Rules of the Retail Trade in Alcoholic Beverages at the Enterprises of Trade and Public Catering" of 20 May 2004 was in conflict with Paragraph 17 (wording of 25 April 2006) of Article 34 of the Republic of Lithuania's Law on Alcohol Control, and is also in conflict with Item 2 of Article 94 of the Constitution of the Republic of Lithuania, with the constitutional principles of a state under the rule of law and justice and with Paragraph 17 (wording of 21 June 2007) of Article

34 of the Republic of Lithuania's Law on Alcohol Control.

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
Vytautas Sinkevičius
Stasys Stačiokas
Romualdas Kęstutis Urbaitis