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**The Official Constitutional Doctrine: Concept, Significance and the Main Principles
of Development¹**

This article deal with the main issues of the official constitutional doctrine – its concept, significance and the main principles of development. The article also reveals the differences and similarities between the official and academic constitutional doctrine.

During twenty-three years of its activity, the Constitutional Court of the Republic of Lithuania has developed the official constitutional doctrine by interpreting and disclosing the content of the Constitution in more than five hundred acts – rulings, decisions and conclusions². However, although the findings presented in this article are based on the practice of the Constitutional Court of the Republic of Lithuania, they can be applied in the broader theoretical context. Indeed, there is no reason to understand the official constitutional doctrine in an essentially different way in Ukraine or in any other country.

Concept of the Official Constitutional Doctrine

The concept of “constitutional doctrine” encompasses two meanings. According to the first meaning, “doctrine” may be understood as conceptions and theories formulated by legal scholars; in other words, one has in mind the academic doctrine of constitutional law. The second meaning refers to the constitutional doctrine, formulated by constitutional courts and other institutions performing constitutional review; it is namely this kind of constitutional doctrine that is called official.

The word “official” implies that this type of constitutional doctrine provides the ultimate and binding interpretation of constitutional norms, whereas other interpretations, even those provided by the most authoritative scholars, are opinions about law, but not law itself. Here one can find the first difference between the official and academic constitutional doctrine. However, the official and academic constitutional doctrine is also interrelated as the official constitutional doctrine cannot emerge in a vacuum. It can be maintained that the official constitutional doctrine unites academic legal doctrine with the text of the constitution, i.e. it is the result of the application of achievements of the academic doctrine

¹ This text prepared on the basis of the report presented on 8 October 2016 in Kiev at the international conference “Конституційний контроль і процеси демократичної трансформації у сучасному суспільстві” devoted to the 20th anniversary of the Constitutional Court of Ukraine.

² All the acts of the Constitutional Court of the Republic of Lithuania (including those referred thereafter) are available in English at the official website of the Court: <http://www.lrkt.lt/en/court-acts/rulings-conclusions-decisions/171/y2016>.

to the interpretation of the constitution in the course of administration of constitutional justice. Thus, the official constitutional doctrine may be defined as the outcome of the interpretation of the constitution by the competent and authorised institution (constitutional court), which is based on the academic legal doctrine, has legally binding effect and aims at the uniform perception of the constitutional provisions.

The necessity of the official interpretation of the constitution (official constitutional doctrine) is determined by the very fact that though constitutional texts of different states vary in their exhaustiveness, their textual expression is unavoidably limited and multimeaningful. At the same time, the perception of the constitution as supreme law without gaps, comprising both explicit and implicit provisions, implies the necessity to reveal the systemic interrelations of its provisions, as well as the necessity to look beyond its text into its deeper meaning. In the states where institutions exercising constitutional review (constitutional courts) are established, including Lithuania, the meaning of the Constitution is revealed in the course of administering constitutional justice and, in particular, in verifying the compliance of legal acts with the Constitution (determining constitutionality of the disputed legislation). It is obvious that any legal text, not excluding the Constitution, cannot be applied without interpreting its content, i.e. disclosing the meaning of its provisions sometimes by choosing the most acceptable way of understanding from a number of possible options. Besides, the necessity to secure the integrity of the legal system determines that the official interpretation of the Constitution cannot be entrusted to different institutions, and this kind of interpretation therefore constitutes an immanent and exclusive function of institutions performing constitutional review (constitutional courts). The interpretation of constitutional provisions applicable or relevant to a particular case results in emerging the corresponding fragments of the official constitutional doctrine.

Significance of the Official Constitutional Doctrine

One can characterise the significance of the official constitutional doctrine by several interrelated features: (1) it results in the disclosure of the content of the Constitution, (2) it has the binding nature, and (3) it serves as a means to ensure the supremacy of the Constitution. The official constitutional doctrine together with the text of the Constitution are the main sources of constitutional law and make up the Constitution in the “wide” sense.

First, regarding the disclosure of the real content of the Constitution one can note that the interpretation of the Constitution provided by the Constitutional Court unfolds the “living” content of the Constitution, i.e. the content of the Constitution that evolves, to a certain extent, together with the development of the state and society itself. This evolution opens the door to the necessary changes, while, at the same time, preserving the stability of the text of the Constitution as well as the fundamental

constitutional values. Therefore, the official constitutional doctrine formulated by the Constitutional Court can be regarded as “the living Constitution”.

Secondly, as regards the binding nature of the official constitutional doctrine, the acts of the Constitutional Court are binding on all state institutions, courts, all enterprises, organisations, officials and citizens. Therefore all law-making and law-applying subjects must pay regard to the official constitutional doctrine when they apply the Constitution; they may not interpret the provisions of the Constitution differently from the interpretation provided in the acts of the Constitutional Court³. Thus, any interpretation of the Constitution by other public institutions or officials is subordinated to the interpretation by the Constitutional Court.

Thirdly, as regards the role of the official constitutional doctrine in ensuring the supremacy of the Constitution, one can emphasise the necessity of the uniform understanding of the Constitution in order to perceive the Constitution as the highest standard of legality. Therefore disregard of the official constitutional doctrine that aims at uniform understanding of the constitutional provisions could lead to different application of the Constitution by different institutions and, as a consequence, could constitute a serious threat to the supremacy of the Constitution. For example, without the compliance with the official constitutional doctrine, it would not be possible to implement properly the rulings of the Constitutional Court, in particular those requiring positive legislative action.

Certainly, the official interpretation of the Constitution does not in any way preclude alternative interpretations on the academic level. In analysing the official interpretation of the Constitution and providing its evaluations, the academic legal doctrine identifies the strengths and weaknesses of the official constitutional doctrine; it can propose the possible directions and inspire the progressive development and sometimes even the correction of the official constitutional doctrine. The characteristic feature of the academic legal doctrine is its plurality: academic views may be both supporting and critical towards the official constitutional doctrine. In a free society the right to criticize certain aspects of the existing official constitutional doctrine or to provide alternative interpretations is an inviolable right, guaranteed by the Constitution itself. However, scholarly conclusions may not change or challenge the binding nature of the acts adopted by the Constitutional Court, i.e. they cannot be placed on an equal footing with the official constitutional doctrine. Thus, the academic legal doctrine and the official constitutional doctrine do perform different functions.

³ See: the 20 September 2005 decision of the Constitutional Court of the Republic of Lithuania on the 4 August 2005 Petition of the Klaipėda Regional Court requesting an Investigation into whether Item 89 of the Instructions for Execution of Decisions as confirmed by the Order (No. 432) “On confirming the Instructions for Execution of Decisions” of 31 December 2002 issued by the Minister of Justice of the Republic of Lithuania is not in Conflict with the Constitution of the Republic of Lithuania (English text: <http://www.lrkt.lt/en/court-acts/search/170/ta1310/content>); the 5 September 2012 ruling of the Constitutional Court of the Republic of Lithuania in case No. 8/2012 on the Compliance of Paragraph 5 (Wording of 22 March 2012) of Article 2 of the Republic of Lithuania Law on Elections to the Seimas with the Constitution of the Republic of Lithuania (English text: <http://www.lrkt.lt/en/court-acts/search/170/ta1055/content>).

Main Principles of the Development of the Official Constitutional Doctrine

One can highlight the following main principles of the development of the official constitutional doctrine: 1) the principle of gradual development; 2) the principle of consistency; 3) the inadmissibility of interpretation of the Constitution based on lower-ranking legal acts; 4) the principle of harmonisation with international and EU law; 5) the application of different methods of the interpretation of the Constitution.

Principle of gradual development. The official constitutional doctrine on a certain issue is not formulated all “at once”, but “case by case”, by supplementing the elements disclosed in previous constitutional justice cases with new elements. New doctrine is formulated on the basis of the existing doctrine. This process is uninterrupted and is never fully finished, because the possibility of the necessity to disclose new aspects of the constitutional legal regulation, which have not been disclosed in previous constitutional justice cases, never disappears⁴. Thus, having originated as the interpretation of the Constitution in its narrow sense, the official constitutional doctrine with time becomes better developed not only on the basis of the original text of the Constitution alone, but also on its own basis. The saying “grows like coral”, or layer by layer, perfectly fits to describe the process of the development of the official constitutional doctrine. As new official constitutional doctrinal provisions are formulated, the diversity as well as completeness of the legal regulation consolidated in the Constitution is disclosed⁵. As famously noted by Charles Evans Hughes, “we are under a Constitution, but the Constitution is what the judges say it is”, that is as much as there is the official constitutional doctrine.

As an example of the gradual development, one can refer to the development of the official constitutional doctrine regarding the status of international law in the Lithuanian legal system. Article 135(1) of the Constitution refers to the respect for international law only in the context of Lithuanian foreign policy. It is stated that, “in implementing its foreign policy, the Republic of Lithuania shall follow the universally recognised principles and norms of international law”. However, in its ruling of 9 December 1998 concerning the death penalty, relying on the overall interpretation of the Constitution, in particular on the principles of open civil society and the rule of law, the Constitutional Court held that, by recognising the principles and norms of international law, the State of Lithuania cannot apply to its people

⁴ See, *inter alia*, the 28 March 2006 ruling of the Constitutional Court of the Republic of Lithuania in case No. 33/03 on the Compliance of Item 2 of Paragraph 1 of Article 62, Paragraph 4 (Wording of 11 July 1996) of Article 69 of the Republic of Lithuania’s Law on the Constitutional Court and Paragraph 3 (Wording of 24 January 2002) of Article 11, Paragraph 2 (Wording of 24 January 2002) of Article 96 of the Republic of Lithuania’s Law on Courts with the Constitution of the Republic of Lithuania (English text: <http://www.lrkt.lt/en/court-acts/search/170/ta925/content>).

⁵ See, *inter alia*, the 28 March 2006 ruling of the Constitutional Court of the Republic of Lithuania (note 4) and the 11 July 2014 ruling No. KT36-N10/2014 of the Constitutional Court of the Republic of Lithuania in case No. 16/2014-29/2014 on the Compliance of the Provisions of the Republic of Lithuania’s Law on Referendums with the Constitution of the Republic of Lithuania (English text: <http://www.lrkt.lt/en/court-acts/search/170/ta859/content>).

any standards that would substantially differ from international ones⁶. In this way, the Constitutional Court has extended the scope of application of the constitutional provision beyond the chapter of the Constitution regarding the foreign policy by recognising international law as the minimum constitutional standard for human rights protection under national law. In the subsequent constitutional jurisprudence, Article 135(1) has been interpreted as the constitutional provision enshrining the constitutional principle of *pacta sunt servanda*, which means the imperative of fulfilling, in good faith, the obligations assumed by the Republic of Lithuania under international law, including under international treaties and customary international law. Moreover, in its ruling of 24 January 2014 concerning the constitutionality of constitutional amendments, the Constitutional Court held that the Constitution does not permit any such amendments to the Constitution that would deny the international obligations of the Republic of Lithuania and, at the same time, the constitutional principle of *pacta sunt servanda* as long as the said international obligations are not denounced in accordance with the norms of international law⁷.

Another example of gradual development of the official constitutional doctrine is related to the constitutional requirements for the calling of referendums. In one of its first rulings the Constitutional Court noted that the Parliament's duty to call a referendum could not be subject to any additional conditions or decisions, which are not indicated in the Constitution⁸. Otherwise, allegedly the supreme sovereign power of the Nation would be limited. Subsequently, elaborating on this doctrine twenty years later, in its ruling of 11 July 2014, the Constitutional Court held that the statements from the ruling of 22 July 1994 may not be interpreted without taking account of other provisions of the Constitution, as well as of the entire official constitutional doctrinal context and its development⁹. It was emphasised that the requirement that the Constitution must be observed when referendums are called may not be regarded as an additional condition, which is not provided for in the Constitution. The Constitution is equally binding on the civil Nation itself. Therefore, the provisions of the Constitution may not be interpreted to mean that the Nation may, by referendum, establish any legal regulation it requests, including a legal regulation not complying with the requirements stemming from the Constitution (including the substantive limitations on constitutional amendments). Accordingly, the Constitutional Court held that the imperative derives

⁶ The 9 December 1998 ruling of the Constitutional Court of the Republic of Lithuania in case No. 2/98 on the Compliance of the Death Penalty provided for by the Sanction of Article 105 of the Criminal Code of the Republic of Lithuania with the Constitution of the Republic of Lithuania (English text: <http://www.lrkt.lt/en/court-acts/search/170/ta1135/content>).

⁷ The 24 January 2014 ruling of of the Constitutional Court of the Republic of Lithuania in case No. 22/2013 on the Compliance of the Republic of Lithuania's Law Amending Article 125 of the Constitution and Article 170 (Wording of 15 March 2012) of the Statute of the Seimas of the Republic of Lithuania with the Constitution of the Republic of Lithuania (English text: <http://www.lrkt.lt/en/court-acts/search/170/ta850/content>).

⁸ The 22 July 1994 ruling of of the Constitutional Court of the Republic of Lithuania in case No. 18/94 on the Compliance of the Provisions of Items 1, 9, 12 and 39 of the Law "On Amending and Supplementing the Republic of Lithuania's Law on Referendums" of 15 June 1994, by Which Articles 1, 9, 12 and 32 of the Law on Referendums Have Been Amended or Supplemented, with the Constitution of the Republic of Lithuania (English text: <http://www.lrkt.lt/en/court-acts/search/170/ta963/content>).

⁹ The 11 July 2014 ruling of the Constitutional Court of the Republic of Lithuania (note 5).

from the principle of the supremacy of the Constitution not to put to a referendum any such possible decisions that would not be in line with the procedural or substantive requirements inherent in the Constitution, even if these requirements are not consolidated *expressis verbis*. In addition, the Constitutional Court emphasised the importance to consolidate by law the requirements stemming from the Constitution for the content and form of an issue submitted to a referendum, including the requirement that issues submitted to a referendum must be formulated in a clear and not misleading manner, also that they may not include several unrelated questions or provisions, etc. The Constitutional Court also underlined that the substantive limitations on the amendment of the Constitution, which protect the core of the Constitution, the constitutional identity of the state, as well as the integrity and inner unity of the Constitution, are equally applicable in the event of the amendment of the Constitution by referendum.

The gradually evolving nature of the official constitutional doctrine (and, at the same time, of the Constitution) sometimes leads to the emergence of certain concerns that the Constitutional Court is becoming the “owner of the Constitution”. However, it is important to emphasise that the binding nature of the official constitutional doctrine means that it is binding on the Constitutional Court itself. More than once the Constitutional Court held that the legal position of the Constitutional Court (*ratio decidendi*) in constitutional justice cases has the significance of the precedent¹⁰. The Constitutional Court must follow the existing precedents and the official constitutional doctrine so as to ensure the continuity of the constitutional jurisprudence (its consistency and non-discrepancy), as well as the predictability of its decisions¹¹.

Principle of consistent development. It should be singled out as the second fundamental principle of the formation of the official constitutional doctrine. One can emphasise that consistency is an essential feature of the constitutional jurisprudence in a consolidated democracy. Thus, though the correction of the official constitutional doctrine is an exclusive competence of the Constitutional Court, in order to ensure legal certainty, the Constitutional Court has formulated the self-restraining doctrine in

¹⁰ See, *inter alia*, the 22 October 2007 ruling of the Constitutional Court of the Republic of Lithuania in case No. 38/04-39/04 on the Compliance of Article 4 (Wordings of 2 July 2002, 4 November 2004, 19 May 2005 and 8 June 2006) of the Republic of Lithuania’s Law on the State Pensions of Judges with the Constitution of the Republic of Lithuania (English text: <http://www.lrkt.lt/en/court-acts/search/170/ta927/content>); the 10 December 2012 ruling of the Constitutional Court of the Republic of Lithuania in case No. 44/2010 on the Compliance of Paragraph 1 (Wording of 7 July 1999) of Article 48 of the Republic of Lithuania’s Law on the Organisation of the National Defence System and Military Service with the Constitution of the Republic of Lithuania (English text: <http://www.lrkt.lt/en/court-acts/search/170/ta1044/content>).

¹¹ See, *inter alia*, the 28 March 2006 ruling of the Constitutional Court of the Republic of Lithuania (note 4); the 21 November 2006 decision of the Constitutional Court of the Republic of Lithuania in case No. 24/05-04/06 on the Construction of a Provision of Item 6.3 of Chapter II of the Reasoning Part of the Ruling of the Constitutional Court of the Republic of Lithuania “On the Compliance of Paragraph 3 (Wording of 22 December 1998) of Article 73 of the Statute of the Seimas of the Republic of Lithuania with the Constitution of the Republic of Lithuania” of 4 April 2006 (English text: <http://www.lrkt.lt/en/court-acts/search/170/ta1328/content>); the 22 October 2007 ruling of the Constitutional Court of the Republic of Lithuania (note 10); the 5 September 2012 ruling of the Constitutional Court of the Republic of Lithuania (note 3); the 13 March 2013 decision of the Constitutional Court of the Republic of Lithuania in case No. 40/03; 45/03-36/04 on the Construction of the Provisions of the Constitutional Court’s Rulings of 30 December 2003 and 13 November 2006 (English text: <http://www.lrkt.lt/en/court-acts/search/170/ta911/content>).

this respect. The prerogative of the Constitutional Court to reinterpret (or correct) the official constitutional doctrine is reserved only for exceptional cases when it is objectively inevitable. Such a constitutional necessity may be determined by the need to enhance the protection of human rights and other values enshrined in the Constitution, or the need to expand the possibilities of constitutional control in order to guarantee constitutional justice.

Among the few examples of the correction of the official constitutional doctrine, the case law related to the interpretation of the principle of the equality of all persons before the law can be mentioned. In one of its first rulings (the ruling of 8 November 1993) the Constitutional Court took a purely formal approach based solely on the literal text of the Constitution and held that this principle is applicable only to natural persons¹². The Constitutional Court reasoned that Article 29 of the Constitution, where this principle is established, belongs to Chapter II of the Constitution, which is entitled as “The Human Being and the State”; therefore, the notion of “a person” in this context can only be a synonym of “a human being”. Thus, in this constitutional justice case (which concerned the alleged violations of the equality of political parties and public political movements), the Constitutional Court did not find any legal ground for a more extensive interpretation of the notion of “a person”. This position was corrected two and a half years later, in the ruling of 28 February 1996, where the Constitutional Court, relying on the overall constitutional regulation (that is, taking into account that the principle of the equality of all persons before the law is closely interrelated with other constitutional principles and provisions, including the principle of the rule of law), made a conclusion that this principle should be applied not only to natural persons but also to legal persons (according to the Court’s position expressed in that ruling, as a rule, legal persons are associations of natural persons)¹³. This corrected concept of persons as subjects of the principle of equality entailed the possibility to defend the rights of legal persons in cases where they are faced with discriminative treatment.

Nevertheless, as mentioned before, the correction of the official constitutional doctrine should be regarded as an exception to the general rule. The restrained approach to this possibility is necessary, among other things, due to the fact that the existing official doctrine forms an integral system, and a change in one part of the system affects the whole system. That is why the Constitutional Court has identified particular instances when the correction of the official constitutional doctrine would be

¹² The 8 November 1993 ruling of the Constitutional Court of the Republic of Lithuania in case No. 6 on the Compliance of the Republic of Lithuania’s Law “On a Partial Amendment and Supplement to the Republic of Lithuania’s Law on Elections to the Seimas” of 16 March 1993 with the Constitution of the Republic of Lithuania (English text: <http://www.lrkt.lt/en/court-acts/search/170/ta947/content>).

¹³ The 28 February 1996 ruling of the Constitutional Court of the Republic of Lithuania in case No. 10/95 on the Compliance of the Resolution of the Government of the Republic of Lithuania (No. 1164) “On the Capitalisation of the Credits of Some Enterprises of the Ministry of Agriculture” of 30 August 1995 with the Constitution of the Republic of Lithuania, as well as with Article 13 of the Republic of Lithuania’s Law on Budgeting, Article 9 of the Republic of Lithuania’s Law on State Regulation of Economic Relations in Agriculture, and Paragraph 1 of Article 43 of the Republic of Lithuania’s Company Law (English text: <http://www.lrkt.lt/en/court-acts/search/170/ta1000/content>).

impermissible. In particular, it would be constitutionally unjustified to correct the official constitutional doctrine where such a correction would change the system of values entrenched in the Constitution or would deny its inner unity, reduce the guarantees of the protection of the supremacy of the Constitution in the legal system, undermine the guarantees of constitutional human rights and freedoms, or change the model of the separation of powers enshrined in the Constitution¹⁴.

For example, after the judgment in the case of *Paksas v. Lithuania* was delivered by the European Court of Human Rights, the Constitutional Court declined to correct the official constitutional doctrine concerning the impermissibility to stand for election as a member of the Seimas if a person was removed from office under impeachment proceedings for a gross violation of the Constitution and a breach of the oath¹⁵. In the case law of the Constitutional Court it was held that such a person could not again take the oath to be loyal to the Republic of Lithuania and acquire the rights of a representative of the Nation as the committed breach of the oath had resulted in a reasonable doubt in trustworthiness of this person. That is the established system of values according to the Constitution currently in force. Therefore the mere reinterpretation on the basis of the judgment of the European Court of Human Rights would inevitably change this system (would distort the existing balance between the individual electoral rights and requirement of loyalty to the Constitution) and diminish the significance of the constitutional oath. In view of the existing incompatibility between the obligations of the Republic of Lithuania under the European Convention on Human Rights and the constitutional regulation in question, the Constitutional Court held that this incompatibility has to be removed only by amending the Constitution.

As regards the importance of consistency of the jurisprudence (the official constitutional doctrine), one can recall that the Constitutional Court is a legal and not a political institution, whose case law must be foreseeable. Thus, no correction of the official constitutional doctrine may be determined by accidental (from the perspective of law) factors, such as, for example, a mere change in the composition of the Constitutional Court¹⁶, or political expediency, or public opinion. Otherwise, a threat would arise to the stability of the official constitutional doctrine and the Constitution itself. It should also be mentioned that consistency in the development of the constitutional doctrine and judicial self-restraint with regard to corrections of the constitutional doctrine helps to ensure that the interpretation of the Constitution, as well as decisions based on it, will not be arbitrary or based on individual attitudes, emotions, or purely political reasons, including change of political power. Strict adherence to the principle of consistency serves as a safeguard against attempts of political pressure aimed at the Constitutional Court.

Inadmissibility of interpretation of the Constitution based on lower-ranking legal acts. This principle of the development of the official constitutional doctrine is related to the constitution-centric

¹⁴ See, *inter alia*, the 28 March 2006 ruling of the Constitutional Court of the Republic of Lithuania (note 4); the 5 September 2012 ruling of the Constitutional Court of the Republic of Lithuania (note 3).

¹⁵ The 5 September 2012 ruling of the Constitutional Court of the Republic of Lithuania (note 3).

¹⁶ *Ibid.*, note 14.

concept of the Lithuanian legal system, determining that the interpretation of the Constitution must be based on the logic of the Constitution itself, on the interrelations between its norms and principles, and not on the laws or other lower-ranking legal acts¹⁷. From the viewpoint of constitutional law, it is not the Constitution that must be interpreted on the grounds of laws, but laws must be interpreted on the grounds of the Constitution. Only if doing so, it is possible to assess laws from the perspective of the Constitution as the apex of the legal system¹⁸.

Harmonisation with international and EU law. In this context, the question may arise as to the role of international law in the process of constitutional interpretation. According to the official constitutional doctrine, ratified international treaties acquire the legal force of a law. However, the legal nature of binding international norms cannot be fully equated to that of the acts adopted by the legislature. Constitutional principle of respect for international law (*pacta sunt servanda*), principle of an open, just and harmonious civil society, principle of geopolitical orientation of the state serve as bridges between the Constitution and international law. In other words, they lead to the openness of the Constitution towards the international legal system, i.e. the duty of the Constitutional Court to see the Constitution in the broader international and, in particular, European context by applying not less favourable standards to the people of the country. Therefore, in deciding constitutional justice cases, relevant international legal regulation is much more significant than mere contextual data. It can be held that the mentioned constitutional principles, which also constitute an important part of Lithuanian constitutional traditions, give rise to the constitutional presumption of compatibility of international law (and EU law) with the Constitution. This presumption is also indirectly confirmed by the doctrine developed in the Constitutional Court's ruling of 24 January 2014 in relation to unconstitutional amendments to the Constitution¹⁹. In this ruling the Constitutional Court pointed out that the Constitution does not permit any such amendments to

¹⁷ See, *inter alia*, the 12 July 2001 Ruling of the Constitutional Court of the Republic of Lithuania in case No. 13/2000 14/2000-20/2000-21/2000-22/2000-25/2000-31/2000-35/2000-39/2000-8/01-31/01 on the Compliance of Paragraphs 1 and 2 of Article 4, Paragraphs 1 and 3 of Article 5, Item 1 of Paragraph 3, Paragraphs 4, 5 and 6 of Article 7 of the Republic of Lithuania's Law on the Work Pay of State Politicians, Judges and State Officials, as well as Chapter II of the Appendix to the same Law, Appendix 6 to the Republic of Lithuania's Law on the Approval of the Financial Indicators of the 2000 State Budget and Municipal Budgets, Article 9 of the Republic of Lithuania's Law amending the Law on the Approval of the Financial Indicators of the 2000 State Budget and Municipal Budgets, the Resolution of the Government of the Republic of Lithuania (No. 499) "On the temporary experimental Procedure for the Work Pay of Heads and other Officials of State Authority, State Administration and Law Enforcement Bodies" of 29 November 1991, the Resolution of the Government of the Republic of Lithuania (No. 666) "On the Work Pay of Judges of Courts, Officials and other Employees of the Prosecutor's Office and the State Security Department of the Republic of Lithuania" of 24 June 1997, the Resolution of the Government of the Republic of Lithuania (No. 1494) "On a partial Amendment of the Resolution of the Government of the Republic of Lithuania (No. 689) "On the Work Pay of Chief Officials and Functionaries of Law and Order Institutions and of Law Enforcement and Control Institutions" of 30 June 1997" of 28 December 1999 with the Constitution of the Republic of Lithuania (English text: <http://www.lrkt.lt/en/court-acts/search/170/ta941/content>).

¹⁸ Sinkevičius, V. Konstitucijos interpretavimo principai ir ribos [The Principles and Limits of Interpretation of the Constitution]. *Jurisprudencija*, 2005, vol. 67(59), pp. 7–19.

¹⁹ The 24 January 2014 ruling of of the Constitutional Court of the Republic of Lithuania (note 7).

the Constitution that would deny the international obligations of the Republic of Lithuania as long as these international obligations are not denounced in accordance with the norms of international law.

Thus, the constitutional presumption of the compatibility of international law and EU law with the Constitution implies the duty of the Constitutional Court, when interpreting the provisions of the Constitution, to pay regard to the international and European legal context, i.e. to harmonise the relevant constitutional and international (European) legal provisions. The principle of harmonisation with international and EU law leads to several implications, including, for instance, the necessity to interpret the provisions of the Constitution in such a manner that their content would not deny any corresponding international and EU legal norms; also, favourable regard has to be given to international and European case law (including that of the European Court of Human Rights and the Court of Justice of the European Union); where several versions of interpretation are possible, the choice should be made in favour of the one which is in the greatest accord with the international and EU legal provisions.

The jurisprudence of the Lithuanian Constitutional Court makes it clear that, in cases where the official constitutional doctrine on a specific issue is not sufficiently developed (for example, the constitutional conception of family, or constitutional standards of the protection of state secrets), the Lithuanian Constitutional Court internalises the provisions of relevant international or EU law. In other words, international and EU law serves as a direct source of inspiration for the Constitutional Court in forming and developing the official constitutional doctrine. At the same time, constitutional law is continuously supplemented with the elements derived from international and EU law.

There is no doubt, however, that the principle of consistent interpretation is not absolute. The application of this principle may not threaten the supremacy of the Constitution. Thus, this principle should not be applied in cases where it would lead to the denial of the fundamental constitutional values or the constitutional standards of human rights protection that are higher than the respective international or European legal standards.

Application of different methods of the interpretation of the Constitution. The Constitutional Court has more than once noted that the nature of the Constitution as an integral act, which provides the guidelines for the entire legal system, determines that the Constitution may not be interpreted purely literally, that is, by applying the sole linguistic (verbal) method. When interpreting the Constitution, various methods of legal interpretation must be applied, including systemic, logical, teleological, historical, comparative, and other methods²⁰. It is clear that all these methods are “borrowed” from legal science, including the academic constitutional doctrine.

²⁰ The 25 May 2004 ruling of the Constitutional Court of the Republic of Lithuania in case No. 24/04 on the Compliance of Article 1(1) (Wording of 4 May 2004) and Paragraph 2 (Wording of 4 May 2004) of Article 2 of the Republic of Lithuania’s Law on Presidential Elections with the Constitution of the Republic of Lithuania (English text: <http://www.lrkt.lt/en/court-acts/search/170/ta1269/content>).

While applying the comparative method, the Constitutional Court analyses the jurisprudence of constitutional courts of other states, which may serve as a source of inspiration concerning the direction, content, and form of the interpretation of particular provisions of the Constitution. The decisions of the constitutional courts of foreign states may be referred to in order to provide a wider context of the considered situation, or to reinforce the adopted line of reasoning. For example, in the case concerning the constitutional concept of family, the Constitutional Court referred to relevant case law of the constitutional control institutions of Croatia, the Czech Republic, France, Hungary, Germany, and Slovenia as testifying to the fact that a family is defined by taking account of the variety of family forms existing in society at a given period of time, as well as of the relevant demographic, economic, and social changes taking place in the life of society²¹.

The historical method gives the opportunity to examine the origin and development of the constitutional regulation in question and to identify constitutional traditions relevant to establish the exact meaning of the existing constitutional provision. For example, one of such traditions, emanating from the first democratic Constitution of the Republic of Lithuania of 1922, is the prohibition of multiple nationality. It was one of the arguments for the Constitutional Court to support the interpretation of the current prohibition of multiple nationality under Article 12(2) of the Constitution as allowing for nationals of the republic of Lithuania to possess nationality of another state only in exceptional cases²².

The systemic method is probably the most important in interpreting the Constitution. Its importance derives from the very perception of the Constitution as the integral whole of explicit and implicit provisions. That is why also the integral application of the whole range of methods in the interpretation of the Constitution is essential for balancing various constitutional provisions, creating the conditions for the realisation of the purpose of the Constitution as a social contract and ensuring that the spirit of the Constitution (the meaning of the overall constitutional regulation) will not be denied.

In this context the constitutional justice case concerning the membership of the Republic of Lithuania in NATO can be mentioned. In 2011 a group of parliamentarians disposed against NATO submitted a petition requesting to recognise that certain provisions of the Law on International Operations, Exercises and Other Events of Military Co-operation, relevant to Lithuania's membership in NATO and participation in the NATO military operations, were in conflict with the Constitution. The petitioners argued that due to Article 137 of the Constitution, according to which there may not be any foreign military bases on the territory of the Republic of Lithuania, the provisions of the Law regulating the

²¹ The 28 September 2011 ruling of the Constitutional Court of the Republic of Lithuania in case No. 21/2008 on the Compliance of the Provisions of the State Family Concept as Approved by Resolution of the Seimas of the Republic of Lithuania No. X-1569 "On the Approval of the State Family Concept" of 3 June 2008 with the Constitution of the Republic of Lithuania (English text: <http://www.lrkt.lt/en/court-acts/search/170/ta1112/content>).

²² The 13 November 2006 ruling of the Constitutional Court of the Republic of Lithuania in case No. 45/03-36/04 on the Compliance of the Provisions of the Legal Acts Regulating the Citizenship Relations with the Constitution of the Republic of Lithuania (English text: <http://www.lrkt.lt/en/court-acts/search/170/ta1331/content>).

deployment of foreign allied forces in Lithuania were unconstitutional. Thus, the petitioners relied on a purely verbal (and taken out of broader context) interpretation of the Constitution, which would have implied the refusal of international assistance (including that from the NATO Allies) in the event of aggression.

In its ruling of 15 March 2011, the Constitutional Court applied the systemic method and interpreted the constitutional prohibition on the establishment of foreign military bases on the territory of the Republic of Lithuania in the light of constitutional imperatives and aims to ensure the independence and security of the state as well as welfare of its people²³. Therefore Court came to the conclusion the constitutional prohibition to deploy foreign military bases could not be understood only literally and had to be restricted so as to ensure the most effective means of defence of the country. The Court held that this prohibition cannot preclude the State of Lithuania to seek assistance from the allied foreign forces as well as to establish on the Lithuanian soil the allied military bases that are directed and controlled by the Republic of Lithuania and its Allies. In other words, the prohibition to deploy foreign military bases must be understood as safeguarding rather than precluding the protection of the independence of Lithuania, democracy and other constitutional values. In addition this interpretation can be supported by applying historical method: the prohibition to deploy foreign military bases was established in 1992 when the Russian military forces had still been deployed illegally in Lithuania; therefore the aim of the prohibition was to state about the illegality of presence of those forces and to outlaw any other deployment of other forces which could threaten the independence and security of Lithuania.

Thus, the Constitutional Court made it clear that under the Constitution the forces and military bases of NATO allies may be deployed to the Republic of Lithuania. The systemic interpretation of the Constitution in this case did not allow converting the Constitution, to use the famous phrase coined by the US Supreme Court judge Robert Jackson, “into a suicide pact”.

Another significant case that can be mentioned as an example of the application of different methods of the interpretation of the Constitution is the constitutional justice case concerning the death penalty. This case was considered in 1998²⁴. In terms of the purely formal point of view, the Constitutional Court could decide that the Constitution was silent about and therefore did not prohibit the death penalty, as there is no mention of it in the text of the Constitution at all; moreover, at that time Lithuania was not yet a party to Protocol No. 6 to the European Convention on Human Rights concerning the abolition of the death penalty.

However, the Constitutional Court, as it is clear from its reasoning, adopted an approach based

²³ The 15 March 2011 ruling of the Constitutional Court of the Republic of Lithuania in case No. 23/08 on the Compliance of Paragraphs 1, 2, 3, 4 of Article 5, Paragraphs 2, 3, 4 of Article 6, Paragraphs 1, 2, 3 of Article 10 (Wording of 12 May 2005), Paragraphs 2, 3, 5 of Article 14 of the Law on International Operations, Exercises and Other Events of Military Co-operation (Wording of 15 January 2002) with the Constitution of the Republic of Lithuania (English text: <http://www.lrkt.lt/en/court-acts/search/170/ta1099/content>).

²⁴ The 9 December 1998 ruling of the Constitutional Court of the Republic of Lithuania (note 6).

on respect for innate human rights and openness to trends of humanisation of international law. The Constitutional Court noted from the outset that, in deciding on the constitutionality of death penalty, regard should be paid to the fact that the Constitution is an integral act, consolidating the protection of human life in a number of its provisions. According to the Constitutional Court, it was also important to assess the relevant trends in the attitude of the international community regarding the death penalty, the international obligations of the State of Lithuania, and the experience of the historical development of the State of Lithuania in establishing this punishment in criminal laws. Thus, it was held that the lawfulness of the death penalty must be investigated from various aspects.

Applying the historical method, the Constitutional Court overviewed the legal regulation concerning the death penalty starting from the 16th century Statutes of the Grand Duchy of Lithuania up to the present times and drew the conclusion that even the early legal regulation provided restrictions limiting the application of this punishment; and, at the beginning of the 20th century, following the creation of the modern Lithuanian state, the death penalty was regarded as inadmissible in the absence of extreme circumstances.

In using the systemic method, the Constitutional Court paid special attention to the constitutional provisions consolidating the recognition of the innate nature of human rights, the right to life, and the prohibition of torture and cruel, inhuman or degrading treatment. The Constitutional Court noted that the death penalty ceases human life, and there is no possibility of rectifying a mistake if a person who does not deserve it is sentenced to death. Besides, it was held that the death penalty deprives the convict of human dignity, as the state in this case treats the person as a mere object that needs to be eliminated from the human community.

The systemic method also created the preconditions for the Constitutional Court to take account of the development of international standards with regard to human rights protection and, in particular, of the emergence of the European standard concerning the inadmissibility of the death penalty. In this respect the Constitutional Court invoked the striving for an open, just, and harmonious civil society and a state under the rule of law, as established in the Preamble to the Constitution, and drew on the constitutional provisions consolidating the obligation of Lithuania to follow international legal norms and principles. After considering the relevant international treaties and multiple *soft law* documents adopted by the UN General Assembly, the Council of Europe, and the European Parliament, the Constitutional Court came to the conclusion that the abolition of the death penalty was increasingly regarded in Europe as a universally recognised norm. In this context, it was noted that Lithuania at that time was one of the only five states of the Council of Europe that had not yet signed Protocol No. 6. Based on the comparative method, the Constitutional Court also pointed to the “evident trend” in criminal law of European states towards the humanisation of criminal punishments.

Thus, the application of the whole range of different methods of the interpretation of the Constitution enabled the Constitutional Court to provide the arguments supporting the conclusion on the unconstitutionality of the penalty, which, in the words of the Council of Europe, serves “no purpose in a civilised society governed by the rule of law and respect for human rights”²⁵.

Conclusions

To sum it up, as follows from the Lithuanian practice, the official constitutional doctrine is the doctrine consisting of gradual and consistent interpretation of the constitution by the Constitutional Court, which is legally binding and essential for ensuring the supremacy of the Constitution.

The discussed principles of the development of the official constitutional doctrine make it clear that the official interpretation of the Constitution shares certain common features with scientific legal analysis and exert mutual influence. Similar methods of interpretation of law are used in both developing the official constitutional doctrine and conducting scientific research; they are taken from the legal science. Also inevitably the official interpretation of the Constitution employs certain legal scientific concepts as usually there is no reason to give to those concepts different meaning under the Constitution. For instance, such concepts as state institutions²⁶, judicial control over municipal activities²⁷, and the aggravating and mitigating circumstances of a crime came to the official constitutional doctrine from the academic legal doctrine²⁸. In addition, the academic legal doctrine forms a valuable source for developing the official constitutional doctrine and determining the regulatory tendencies in particular areas of law. The inevitable interrelationship of the official constitutional doctrine with the scientific legal doctrine is also determined by the fact that a large part of the justices of constitutional courts come from academic background. As a result of these factors, the academic legal doctrine provides a useful cognitive context

²⁵ Abolition of the Death Penalty. Council of Europe website: http://www.coe.int/t/dghl/standardsetting/hrpolicy/Others_issues/Death_Penalty/default_en.asp.

²⁶ The 21 April 1998 ruling of the Constitutional Court of the Republic of Lithuania in case No. 13/97 on the Compliance of the Republic of Lithuania’s Law on the Implementation of the Law on Amending Article 29 of the Law on the Provision of Information to the Public and the Resolution of the Seimas of the Republic of Lithuania “On Dismissing V. Nikitinas from the Post of the Prosecutor General” of 25 February 1997 with the Constitution of the Republic of Lithuania (English text: <http://www.lrkt.lt/en/court-acts/search/170/ta1125/content>).

²⁷ The 18 February 1998 ruling of the Constitutional Court of the Republic of Lithuania in case No. 2/97 on the Compliance of the Republic of Lithuania’s Law “On the Amendment of and Supplement to the Law on the Governing of a County, as well as the Recognition of the Law on the Government Representative as Null and Void”, as well as the Resolution of the Seimas of the Republic of Lithuania “On the Supplement to the Republic of Lithuania’s Civil Service List of the Positions of ‘A’ Level Functionaries” of 12 December 1996 with the Constitution of the Republic of Lithuania (English text: <http://www.lrkt.lt/en/court-acts/search/170/ta1121/content>).

²⁸ The 15 November 2013 ruling of the Constitutional Court of the Republic of Lithuania in case No. 12/2010-3/2013-4/2013-5/2013 on the Compliance of Paragraph 2 (Wording of 10 April 2002) of Article 255, Paragraph 1 (Wordings of 28 June 2007 and 22 December 2011) and Paragraph 4 (Wordings of 28 June 2007 and 22 December 2011) of Article 256, Paragraph 3 of Article 320, and Item 4 of Paragraph 1 (Wording of 28 June 2007) of Article 326 of the Code of Criminal Procedure of the Republic of Lithuania with the Constitution of the Republic of Lithuania (English text: <http://www.lrkt.lt/en/court-acts/search/170/ta903/content>).

and suggests scientific insights into the problems examined in particular constitutional justice cases. Therefore, quite often the conclusions of legal science are directly or indirectly reflected in the constitutional jurisprudence.

At the same time, constitutional jurisprudence provides a rich source for legal thought and legal science. Sometimes it can even happen that the development of the official constitutional doctrine can provoke and move forward new trends in the academic legal doctrine (for example, the topics of constitutionality of constitutional amendments and eternal constitutional values has become the theme of academic research in Lithuania mostly after the consideration of the relevant cases by the Constitutional Court, in which the corresponding official constitutional doctrine has been formulated).

On the other hand, there are obvious differences between the official constitutional doctrine and the academic legal doctrine. First of all, the official constitutional doctrine is formulated by a special (authorised under the Constitution) institution whose right and duty to interpret officially the Constitution derives from the Constitution itself. This doctrine is a part of the constitutional legal reality and is binding on all persons. Therefore, even the Constitutional Court as the official interpreter of the Constitution is bound by the existing official constitutional doctrine; it is also obliged to follow the principles of gradual and consistent development of that doctrine so as to ensure the uniform application of the Constitution. It is natural, as in each case the Court has to make decision what way of interpretation to choose. Whereas, it is also natural, the academic legal doctrine is multidirectional and pluralistic; it is rare that one can find completely identical and uniform scientific views on the same subject. However, it is clear that the more the main elements of the official constitutional doctrine correspond with the conclusions provided and prevailing in the legal science, the more the official constitutional doctrine is convincing and the better it is accepted by the legal community and society at large.

In concluding, I would like to summarise that strict adherence to the principles of the gradual and consistent development of the official constitutional doctrine is an essential precondition for ensuring the stability of the Constitution and the effective role of the Constitutional Court as the guardian of the Constitution and the rule of law. At the same time, this constitutes a precondition for the Constitutional Court to remain independent from changes in political power, public pressure, or various subjective factors. Independent and based on the supremacy of the Constitution in the legal system and the precedence of the spirit over the letter as well as the dynamic interpretation of the Constitution in consistency with international obligations can ensure such a perception of the Constitution that could prevent the destruction of statehood and democratic constitutional order and secure the European constitutional identity of the State.