1. THE FOUNDATIONS OF THE CONSTITUTIONAL ORDER

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

The Constitutional Court's ruling of 23 November 1999

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

[…]

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

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

1.1.1. The fundamental principles of the State of Lithuania

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

The Constitutional Court's decision of 19 November 2012

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

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

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

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

The continuity of the State of Lithuania and its constitutional identity

The Constitutional Court's ruling of 22 February 2013

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

It needs to be noted that:

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

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

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

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

The Constitutional Court's ruling of 24 January 2014

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

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

the republic – that constitute the foundation of the State of Lithuania as the constitutionally consolidated common good of all society; the innate nature of human rights and freedoms may not be denied, either.

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

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

The continuity of the State of Lithuania and its constitutional identity

The Constitutional Court's ruling of 18 March 2014

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

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

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

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

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

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

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

The Constitutional Court's ruling of 11 July 2014

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

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

The Constitutional Court's ruling of 30 July 2020

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

… the provisions of the fundamental constitutional acts of the State of Lithuania that consolidated and implemented the unamendable fundamental constitutional principles – independence, democracy, and the

innate nature of human rights and freedoms – have supra-constitutional force; they may not be denied by any constitution of the State of Lithuania. On the contrary, the Constitution, as supreme law, enshrines and unconditionally protects these constitutional values. If the Constitution were interpreted in a different way, as mentioned before, the preconditions would be created for abolishing the restored "independent State of Lithuania, founded on democratic principles", as proclaimed by the Act of Independence of 16 February 1918.

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

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

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

The Constitutional Court's ruling of 30 July 2020

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

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

Thus, the constitutions of the State of Lithuania, *inter alia*, the Constitution adopted by the citizens of Lithuania in the referendum of 25 October 1992, derive from the Act of Independence of 16 February 1918.

It should be noted that the unamendable fundamental constitutional principles of the Act of Independence of 16 February 1918 – independence, democracy, as well as the innate nature of human rights and freedoms, which is inseparable from democracy, are consolidated in Article 1 of the Constitution.

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

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

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

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

The Constitutional Court's ruling of 30 July 2020

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

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

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

In view of this, it should be held that the Constitution adopted by the citizens of Lithuania in the referendum of 25 October 1992 derives not only from the Act of Independence of 16 February 1918 (along

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

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

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

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

The Constitutional Court's ruling of 30 July 2020

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

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

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

Republic of Lithuania during 1944–1953 against the Soviet occupation should be regarded as the self-defence of the State of Lithuania; in view of the aggression carried out by the USSR against the Republic of Lithuania, also in view of the continuity of the State of Lithuania and the continuity of citizenship of the Republic of Lithuania, the organised armed partisan forces should be regarded as the armed forces of the Republic of Lithuania that resisted the occupation, i.e. as volunteer forces that should be regarded as a party to an international armed conflict (ruling of 18 March 2014).

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

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

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

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

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

The continuity of the State of Lithuania and its constitutional identity

The Constitutional Court's ruling of 30 July 2020

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

[…]

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

1.1.2. The sovereignty of the Nation

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

The Constitutional Court's ruling of 30 December 2003

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

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

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

The Constitutional Court's ruling of 13 November 2006

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

The State of Lithuania came into being on the basis of an ethnical nation – the Lithuanian nation. This is reflected in the Preamble to the Constitution, which states that it is the Lithuanian nation (i.e. an ethnical nation) that created the State of Lithuania many centuries ago, for centuries staunchly defended its freedom

and independence, preserved its spirit, native language, writing, and customs, embodied the innate right of the human being and the Nation to live and create freely in the land of their fathers and forefathers and preserved the striving and the right to reside in the independent State of Lithuania.

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

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

[…]

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

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

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

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

… citizenship … expresses the legal membership of a person in the state and reflects the fact that a person legally belongs to the civil Nation – the national community. The Lithuanian civil Nation – the national community – unites the citizens of the State (irrespective of their ethnical origin); the citizens, as a whole, compose the Lithuanian civil Nation. All citizens of the Republic of Lithuania belong to the Lithuanian civil Nation, regardless of whether the said citizens belong to the titular nation (they are Lithuanians) or to national minorities (ruling of 10 May 2006). All citizens of the Republic of Lithuania, irrespective of their ethnical origin, are equal under the Constitution; they may not be discriminated against

or granted any privileges on the grounds of their ethnical origin and nationality. On the other hand, the Constitutional Court has held that integration into the society of Lithuania, as well as becoming a fully fledged member of the national community – the civil Nation – is related, *inter alia*, to making an effort to learn the state language, i.e. Lithuanian (ruling of 10 May 2006).

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

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

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

The Constitutional Court's ruling of 11 July 2014

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

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

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

In this context, it should be noted that, under Paragraph 1 of Article 55 of the Constitution, the members of the Seimas are representatives of the Nation. Thus, under the Constitution, only the Seimas is the representation of the Nation, through which the Nation executes its supreme sovereign power. As noted by the Constitutional Court, under the Constitution, there may not be and there is no confrontation between the supreme sovereign power executed by the Nation directly and the supreme sovereign power executed by the Nation through its democratically elected representatives – the members of the Seimas. Thus, under the Constitution, there may not be and there is no confrontation between the Nation and its representation – the

Seimas: the Seimas implements those powers that have been assigned to it by the Nation in the Constitution, adopted by the Nation (ruling of 25 May 2004).

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

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

The Constitutional Court's ruling of 11 July 2014

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

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

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

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

The Constitutional Court's ruling of 11 July 2014

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

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

citizens to equate themselves with the Nation and act on behalf of the Nation while seeking to violate the aforementioned constitutional values.

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

The Constitutional Court's ruling of 15 February 2019

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

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

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

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

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

to political representative institutions was in compliance with the principles of a democratic state under the rule of law (*inter alia*, the conclusion of 5 November 2004, the ruling of 9 November 2010, and the conclusion of 26 October 2012).

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

1.1.3. Democracy

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

The Constitutional Court's conclusion of 23 November 1996

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

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

The Constitutional Court's ruling of 19 September 2002

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

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

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

The Constitutional Court's ruling of 13 December 2004

The constitutional requirement that the state power of the State of Lithuania must be organised in a democratic way and that the democratic political regime must be in place in the country is inseparable from the provision of Paragraph 3 of Article 5 of the Constitution, under which state institutions serve the people,

as well as from the provision of Paragraph 2 of the same article, under which the scope of powers is limited by the Constitution. The nature of the democratic institutions of power is such that all persons who implement the political will of the people are controlled in various forms so that this will would not be distorted (decision of 29 May 1996). In its ruling of 1 July 2004 and conclusion of 5 November 2004, the Constitutional Court held that the Constitution consolidates the principle of responsible governance. The responsibility of the authorities to society is a principle found in a state under the rule of law, and it is established in the Constitution by providing that state institutions serve the people, that citizens have the right to govern the country either directly or through democratically elected representatives, to criticise the work of state institutions or that of their officials, and to file complaints against their decisions, also by guaranteeing citizens the possibility of defending their rights in a court and the right of petition, as well as by regulating the procedure for considering requests and complaints filed by citizens, etc. (ruling of 11 May 1999 and the conclusion of 5 November 2004).

The formation of political representative institutions in a democratic state

The Constitutional Court's conclusion of 10 November 2012

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

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

The Constitutional Court's conclusion of 19 December 2017

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

Freedom of the media as a foundation of a pluralistic democracy

The Constitutional Court's ruling of 16 May 2019

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

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

The Constitutional Court's ruling of 18 December 2019

The provisions of Article 1 of the Constitution, as well as the principle of a state under the rule of law, which is established in the Constitution, determine the main principles of the organisation and activities of the state power of the State of Lithuania (rulings of 18 October 2000, 25 January 2001, and 29 March 2012);

the provision of Article 1 of the Constitution that the State of Lithuania is democratic implies, *inter alia*, that the supremacy of the Constitution, the democratic decision-making process, and political pluralism must be ensured in the state (ruling of 19 September 2002); the majority principle is among the democratic principles of decision making (rulings of 22 July 1994, 4 April 2006, and 2 March 2018); the multi-party system creates the preconditions for ensuring political pluralism (ruling of 29 March 2012).

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

[…]

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

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

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

1.1.4. The form of government of the state

The form of government of the State of Lithuania

The Constitutional Court's ruling of 10 January 1998

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

1.2. THE TERRITORIAL INTEGRITY OF THE STATE

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

The Constitutional Court's ruling of 18 February 1998

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

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

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

The Constitutional Court's ruling of 22 December 1995

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

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

The Constitutional Court's ruling of 11 May 1999

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

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

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

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

[…]

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

[…]

… the Seimas, exercising its discretion to establish a differentiated procedure for impeachment proceedings, is bound by the constitutional concept of impeachment. This concept implies fair legal proceedings, in which priority is given to the protection of the rights of the person. When guaranteeing the protection of the rights of individuals, it is necessary to pay regard to the fundamental principles of a state

under the rule of law; such principles require that jurisdictional and other law-applying institutions be impartial and independent, that they seek to establish the objective truth, and that they adopt their decisions only on the grounds of law. This is possible only if the proceedings are public, the parties to the proceedings have equal rights, and the legal disputes, in particular those regarding the rights of the person, are decided by ensuring that the particular person has the right and possibility of defending those rights. In a state under the rule of law, the right of individuals to defend their rights is unquestionable. Since the Seimas, deciding the question of removing a person from office or that of revoking his/her mandate, acts as a jurisdictional institution, impeachment proceedings are subject to the same requirements.

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

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

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

The Constitutional Court's ruling of 23 November 1999

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

The principle of a state under the rule of law

The Constitutional Court's ruling of 23 February 2000

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

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

The Constitutional Court's ruling of 18 October 2000

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

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

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

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

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

The principle of the protection of legitimate expectations

The Constitutional Court's ruling of 18 December 2001

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

The balance among the values consolidated in the Constitution

The Constitutional Court's ruling of 4 March 2003

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

Legal certainty and legal clarity

The Constitutional Court's ruling of 30 May 2003

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

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

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

The hierarchy of legal acts

The Constitutional Court's ruling of 30 December 2003

… the constitutional principle of a state under the rule of law also implies the hierarchy of legal acts, *inter alia*, it implies that substatutory legal acts may not be in conflict with laws, with constitutional laws,

and with the Constitution, that substatutory legal acts must be adopted on the basis of laws, and that a substatutory legal act is an act of the application of the norms of a law irrespective of whether that act has one-off (ad hoc) application or permanent validity.

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

The Constitutional Court's ruling of 25 May 2004

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

The principle of a state under the rule of law

The Constitutional Court's ruling of 13 December 2004

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

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

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

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

The constitutional principle of a state under the rule of law is an especially broad constitutional principle and comprises a wide range of various interrelated imperatives. Thus, it should be stressed that the content

of the constitutional principle of a state under the rule of law should be revealed by taking account of various provisions of the Constitution and by assessing all values consolidated, defended, and protected by the Constitution, and by having regard to the content of various other constitutional principles as, for instance: the principle of the supremacy of the Constitution, its integrity and direct application; the sovereignty of the Nation; democracy; responsible governance; the limitation of the scope of powers and the principle that state institutions serve the people; the publicity of law; justice (comprising, *inter alia*, natural justice); the separation of powers; civic consciousness; the equality of persons before the law, courts, state institutions, and officials; respect for and the protection of human rights and freedoms (comprising, *inter alia*, the recognition that human rights and freedoms are innate); the balancing of the interests of a person and society; the secularity of the state and its neutrality in world-view matters; the social orientation of the state; social solidarity (combined with the responsibility of everyone for their own fate); and other constitutional principles of no less importance. The constitutional principle of a state under the rule of law is consolidated not only by the striving for an open, just, and harmonious civil society and a state under the rule of law, as declared in the Preamble to the Constitution, but, from various aspects, also by all other provisions of the Constitution. In its ruling of 19 September 2002, the Constitutional Court held that the constitutional principle of a state under the rule of law also embodies the striving for an open, just, and harmonious civil society and a state under the rule of law, as enshrined in the Preamble to the Constitution. The constitutional principle of a state under the rule of law integrates various values consolidated, protected, and defended by the Constitution, including those that are expressed by the aforementioned striving.

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

[…]

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

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

The Constitutional Court's ruling of 13 December 2004

… Legal certainty, legal security, and the protection of legitimate expectations are inseparable elements of the principle of a state under the rule of law. The principle of legal security is one of the essential elements of the principle of a state under the rule of law, which is consolidated in the Constitution; the principle of legal security means the duty of the state to ensure the certainty and stability of a legal regulation, to protect the rights of the subjects of legal relationships, including acquired rights, as well as to respect legitimate interests and legitimate expectations. If legal certainty, legal security, and the protection of legitimate

expectations are not ensured, the trust of persons in the state and law will not be ensured, either. The state must fulfil its obligations undertaken to a person.

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

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

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

or partially protected and defended]. When deciding whether the acquired rights gained by the person during the period of the validity of a legal act that is later ruled to be in conflict with the Constitution (or in conflict with the Constitution and/or laws if the said legal act is substatutory) should be protected and defended (and if so, to what extent such acquired rights should be protected and defended), it is necessary to find out in each case whether, in the event of failure to protect and defend such acquired rights, other values protected by the Constitution would be violated and whether the balance among the values consolidated, protected, and defended by the Constitution would be disturbed. After certain legal acts are ruled to be in conflict with the Constitution (or in conflict with the Constitution and/or laws if the said legal acts are substatutory) and, due to this, certain persons who obeyed law, followed the requirements of laws, and trusted the state and its law may suffer negative consequences, the legislature has the constitutional obligation to assess all the related circumstances and, if necessary, to establish such a legal regulation that would create the possibility in the aforementioned special cases to fully or partially protect and defend the acquired rights of the persons who obeyed law and followed the requirements of laws, where such acquired rights arose from legal acts that were later ruled to be in conflict with the Constitution (or in conflict with the Constitution and/or laws if the said legal acts were substatutory), in order that the principle of justice, enshrined in the Constitution, would not be derogated from, either.

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

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

The Constitutional Court's ruling of 13 December 2004

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

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

The Constitutional Court's ruling of 13 December 2004

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

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

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

The Constitutional Court's ruling of 13 December 2004

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

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

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

It should also be stressed that such failure to adhere to the form of a legal act where the Constitution requires that certain relationships must be regulated by means of a law, but they are regulated by means of a substatutory act (irrespective of whether such relationships are, from any aspect, additionally regulated in a law the legal regulation established in which is challenged by the legal regulation laid down in a substatutory

act, or irrespective of the fact that no law regulates such relationships at all), may provide the sufficient grounds for declaring such a substatutory legal act unconstitutional. Under the Constitution, it is the Constitutional Court that decides whether the substatutory legal acts of the Seimas, the President of the Republic, or the Government, according to their form, are in conflict with the Constitution. When making such a decision, in every case, the Constitutional Court assesses all circumstances of the case, *inter alia*, the place of the reviewed legal regulation in the entire legal system, its objective, as well as the intentions of the law-making subject, the development of the legal regulation of the respective relationships and its changes before the legal act at issue was passed (legislative history), etc.

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

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

The Constitutional Court's ruling of 13 December 2004

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

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

It should be noted that laws must be executed until the moment when they are amended or repealed or, according to the procedure established by the Law on the Constitutional Court, ruled to be in conflict with the Constitution (or in conflict with the Constitution and/or laws if the acts declared unconstitutional are substatutory). … it should be especially emphasised that, until the moment when laws are amended or, according to the procedure established by the Law on the Constitutional Court, are ruled to be in conflict

with the Constitution, all subjects of legal relationships, consequently, including the Government, must execute and apply such laws within their competence; it is not allowed that the Government, which must itself apply laws and/or ensure that other state and municipal institutions and officials apply them, instead of performing the duties established for it by laws and/or ensuring that other state and municipal institutions and officials perform the duties established by laws for them, by means of its substatutory legal acts establish such a legal regulation that would compete with the one laid down in laws and would completely or partially exempt the Government and/or other state and municipal institutions and officials from the performance of the aforementioned duties.

[…]

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

The proportionality of responsibility for violations of law

The Constitutional Court's ruling of 3 November 2005

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

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

The principle of *bona fides*

The Constitutional Court's ruling of 27 June 2007

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

The principle of the protection of legitimate expectations

The Constitutional Court's ruling of 5 July 2007

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

The principle of the protection of legitimate expectations implies the duty of the state, as well as the duty of institutions implementing state power and other state institutions, to observe the obligations assumed by the state. The said principle also means the protection of acquired rights, i.e. persons have the right to reasonably expect that they will retain their rights acquired under effective laws or other legal acts that are not in conflict with the Constitution for the established period of time and will be able to implement these rights in reality.

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

The Constitutional Court's decision of 13 November 2007

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

Legal certainty and legal clarity

The Constitutional Court's ruling of 24 December 2008

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

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

The Constitutional Court's ruling of 2 March 2009

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

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

The Constitutional Court's ruling of 29 November 2010

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

In its acts, the Constitutional Court has also held on more than one occasion that justice is one of the main objectives of law, as a means of regulating social relationships; justice is one of the most important

moral values and [the foundation] of a state under the rule of law; justice may be implemented by ensuring a certain balance of interests and by escaping fortuity and arbitrariness, the instability of social life, and clashes of interests (rulings of 22 December 1995, 6 December 2000, 17 March 2003, 17 November 2003, 3 December 2003, and 24 December 2008, the decision of 20 April 2010, and the ruling of 29 June 2010).

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

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

The principle of a state under the rule of law

The Constitutional Court's ruling of 1 July 2013

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

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

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

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

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

The Constitutional Court's ruling of 14 April 2014

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

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

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

The requirement, in accordance with the constitutional principle of proportionality, not to limit the rights and freedoms of a person more than necessary in order to reach the legitimate objectives that are important to society, *inter alia*, implies the requirement for the legislature to establish a legal regulation that would create the preconditions for the sufficient individualisation of limitations on the rights and freedoms of a

person: a legal regulation limiting the rights and freedoms of a person, as provided for in a law, must be such that would create the preconditions for assessing, to the extent possible, an individual position of each person and, in view of all important circumstances, for individualising, accordingly, the specific measures that are applicable to and limit the rights of that person (ruling of 7 July 2011).

The Constitutional Court has noted that the content of the constitutional principle of a state under the rule of law should be revealed by taking account of the content of various other constitutional principles, including the principle of justice (which comprises, *inter alia*, natural justice). Any disregard of the principle of justice, which is consolidated in the Constitution, would also mean disregard of the constitutional principle of a state under the rule of law (rulings of 3 November 2005, 22 December 2010, and 9 October 2013). Justice may not be achieved through the satisfaction of the interests of exclusively one group and the simultaneous denial of the interests of others (rulings of 4 March 2003 and 9 October 2013).

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

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

[…]

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

The principle of *ex injuria jus non oritur*

The Constitutional Court's ruling of 12 June 2020

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

1.4. THE SUPREMACY OF THE CONSTITUTION

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

1.5. THE SEPARATION OF POWERS

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

The Constitutional Court's ruling of 6 December 1995

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

power in the general system of the branches of power and by its relationship with the other branches of power.

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

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

The Constitutional Court's ruling of 10 January 1998

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

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

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

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

The Constitutional Court's ruling of 21 April 1998

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

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

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

The status of the state supreme institutions is, first of all, based on the powers directly consolidated in the Constitution: the powers of the Seimas are consolidated in Article 67, those of the President of the Republic are consolidated in Article 84, and those of the Government are laid down in Article 94 of the Constitution. The status of the Constitutional Court is consolidated in Chapter VIII, and the status of courts is enshrined in Chapter IX of the Constitution.

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

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

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

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

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

The Constitutional Court’s ruling of 11 May 1999

… In a state under the rule of law, every branch of state power (legislative, executive, or judicial) fulfils the functions vested in it and realises its competence. Paragraph 1 of Article 109 of the Constitution provides that, in Lithuania, justice is administered only by courts; whereas, under Article 74 of the Constitution, the Seimas is assigned to carry out impeachment. When a vote on impeachment takes place at the Seimas, the

question of the constitutional responsibility, but not that of the criminal responsibility, of a person is decided. The removal of a person from office or the revocation of his/her mandate of a member of the Seimas through impeachment proceedings because of the suspicion that he/she has committed a crime is not binding on a court. In its turn, the constitutionally established independence of legislative power and judicial power determines that a judgment handed down by a court is not binding on the Seimas, which adopts a decision on the constitutional responsibility of a person. Otherwise, the constitutional principle of the separation of powers would be violated.

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

The Constitutional Court's ruling of 3 June 1999

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

[…]

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

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

The Constitutional Court's ruling of 21 December 1999

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

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

The Constitutional Court's ruling of 12 July 2001

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

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

[…]

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

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

The Constitutional Court's ruling of 24 December 2002

Under the Constitution, the organisation and activities of state power are based on the principle of the separation of powers. The Constitutional Court has held in its rulings on more than one occasion that the constitutional principle of the separation of powers implies, among other requirements, that legislative

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

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

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

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

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

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

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

There is no delegated legislation in Lithuania

The Constitutional Court's ruling of 5 March 2004

The constitutional principle of the separation of powers determines the absence of delegated legislation in Lithuania (rulings of 26 October 1995, 19 December 1996, and 3 June 1999). Therefore, according to the

Constitution, the Seimas has no right to assign, *inter alia*, the Government to realise the constitutional competence of the Seimas, while the Government may not accept or carry out such an assignment.

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

The Constitutional Court's ruling of 13 May 2004

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

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

The principle of the separation of powers

The Constitutional Court's ruling of 1 July 2004

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

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

The Constitutional Court's ruling of 9 May 2006

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

It should be emphasised that interaction among the branches of state power may not be treated as their conflict or competition; thus, the checks and balances that the judicial branch (institutions thereof) and other branches of state power (institutions thereof) have towards each other may not be seen as the mechanisms of the opposition of the branches of power. The constitutionally consolidated model of interaction among

the branches of state power is also defined by the reciprocal control and balance of the branches of state power (institutions thereof); such reciprocal control and balance does not allow a certain branch of state power to dominate in respect of another branch of state power (or in respect of the other branches of state power); the said model of interaction is also defined by cooperation among the branches of state power, of course, where such cooperation does not overstep the limits established in the Constitution, i.e. does not interfere in the implementation of the powers of another branch of state power.

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

The Constitutional Court's decision of 21 November 2006

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

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

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

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

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

The principle of the separation of powers

The Constitutional Court's ruling of 13 May 2010

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

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

[…]

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

[…]

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

The principle of the separation of powers

The Constitutional Court's ruling of 29 September 2015

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

1.6. THE SCOPE OF POWERS LIMITED BY THE CONSTITUTION

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

The Constitutional Court's ruling of 21 December 1999

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

This norm consolidates an important constitutional principle, which must be taken into account when the powers of state authority institutions are established both in the sphere of relationships between state authorities and a person and in the sphere of interrelations among state authority institutions. Interpreting the

principle established in Paragraph 2 of Article 5 of the Constitution from the said aspect, in its ruling of 3 June 1999, the Constitutional Court held that this constitutional principle also means that, "in cases where the powers of a particular state authority institution are directly established in the Constitution, no other institution may take over such powers from it; while an institution whose powers are defined in the Constitution may neither transfer nor waive these powers. Such powers may not be changed or limited by means of a law". It is necessary to observe these requirements in order to ensure harmony in the functioning of state authority institutions.

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

The Constitutional Court's ruling of 24 January 2003

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

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

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

The Constitutional Court's ruling of 13 May 2004

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

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

The Constitutional Court's ruling of 13 December 2004

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

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

The Constitutional Court's ruling of 29 September 2015

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

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

The Constitutional Court's ruling of 12 April 2018

The constitutional principle of a state under the rule of law is also reflected in Paragraphs 2 and 3 of Article 5 of the Constitution, which stipulate that the scope of powers is limited by the Constitution and that

state institutions serve the people and which consolidate the constitutional principles of responsible governance and the responsibility of state authorities to society.

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

It should be noted that the constitutional principle of responsible governance, interpreted in conjunction with the imperative obliging state institutions to serve the people, as consolidated in Paragraph 3 of Article 5 of the Constitution, implies the publicity and transparency requirements for law-making procedures; these requirements must be followed, *inter alia*, by institutions exercising state power (ruling of 8 July 2016).

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

1.7. LITHUANIAN AS THE STATE LANGUAGE

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

The Constitutional Court's ruling of 21 October 1999

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

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

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

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

The Constitutional Court's ruling of 10 May 2006

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

Using the state language in adopting the decisions of national importance

The Constitutional Court's ruling of 10 May 2006

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

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

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

The interpretation of Article 14 of the Constitution provided in this ruling of the Constitutional Court (and based on, *inter alia*, the jurisprudence of the Constitutional Court formulated in the previous constitutional justice cases) and the requirement, arising from such interpretation (and from the constitutional

concept of civic consciousness and the national community – the civil Nation), to print referendum ballot-papers only in the state language are completely compatible with the provision of Article 37 of the Constitution, whereby citizens belonging to ethnic communities have the right to foster their language, culture, and customs, as well as with the provisions of Article 45 of the Constitution, which state that ethnic communities of citizens independently manage the affairs of their ethnic culture, education, charity, and mutual assistance, and that ethnic communities are provided support by the state, because these provisions, establishing the right of ethnic communities to foster their culture, customs, and language, and to be provided support by the state, do not mean that their interests and the common interests of the State of Lithuania, in the territory of which the respective ethnic communities reside, or the common interests of all society and the civil Nation, may be opposed. The constitutional consolidation of the state language, as well as the requirement to pay regard to the constitutional imperative of the state language, *inter alia*, when the decisions of national importance are made, may not be interpreted as violating the rights of national minorities. On the contrary … the knowledge of the state language ensures the equality of the rights of all citizens of the state. As it was stated in the Constitutional Court's ruling of 13 December 2004, "the nationality of an individual (including in the relationships with the officials or state servants of a state or municipal institution) may not serve as a basis for him/her to demand that the rules arising from the status of the state language be not applied as far as he/she is concerned; otherwise, the constitutional principle of the equality of all persons before the law, courts, state institutions, and officials would be violated".

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

The Constitutional Court's decision of 6 November 2009

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

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

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

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

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

the Republic of Lithuania, *inter alia*, as to what objective criteria should be followed in order that the name and family name of an individual can be entered in non-Lithuanian characters and in non-grammaticised form in the section designed for other entries in the passport of a citizen of the Republic of Lithuania.

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

Writing names and family names in the passports of citizens

The Constitutional Court's decision of 27 February 2014

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

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

[…]

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

[…]

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

[…]

… the VLKK must submit an official conclusion on whether it is also possible to establish such rules of writing the name and family name of a person in the passport of a citizen of the Republic of Lithuania that are … other than [those whereby the name and family name of a person is written in the passport of a citizen in Lithuanian characters and according to pronunciation], *inter alia*, on whether the formulation "in the state language" in the constitutional requirement that "the name and family name of a person must be

written in the passport of a citizen in the state language" and the expression "in Lithuanian characters" may be understood as meaning that, in certain cases, when writing non-Lithuanian names and family names in the passports of citizens of the Republic of Lithuania, it is possible to use not only the letters of the Lithuanian alphabet, but also other exclusively Latin-based characters to the extent that they are consistent with the tradition of the Lithuanian language and do not violate the system of the Lithuanian language and the distinctiveness of the Lithuanian language.

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

In this context, it should also be noted that the Constitutional Court has held on more than one occasion that, under the Constitution, a legal regulation related to defining the content of human rights and freedoms or consolidating the guarantees of their implementation may be established only by means of a law. Therefore, the essential rules of writing the name and family name of a person in the passport of a citizen of the Republic of Lithuania must be established by means of a law.

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

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

1.8.1. General provisions

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

The Constitutional Court's ruling of 11 January 2001

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

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

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

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

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

The Constitutional Court's ruling of 29 November 2001

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

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

The Constitutional Court's ruling of 29 October 2003

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

[…]

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

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

[…]

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

The presumption of the constitutionality and legitimacy of legal acts

The Constitutional Court's ruling of 13 December 2004

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

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

The Constitutional Court's ruling of 13 December 2004

The constitutional principle of a state under the rule of law implies various requirements for the legislature and other law-making subjects: law-making subjects are allowed to pass legal acts only without exceeding their powers; the requirements established in legal acts must be based on general provisions (i.e. certain legal norms and principles) that could be applied to all envisaged subjects of certain legal relationships; any differentiated legal regulation must be based only on the objective differences in the situation of the subjects of certain social relationships regulated by the respective legal acts; in order to ensure that the subjects of legal relationships are aware of the requirements set with respect to them by law, legal norms must be established in advance, legal acts must be published officially, and such acts must be public and accessible; a legal regulation established in laws and other legal acts must be clear, comprehensible, and coherent; the formulations in legal acts must be precise; the consistency and internal harmony of the legal system must be ensured; and legal acts may not contain provisions simultaneously regulating the same social relationships in a different manner; in order that the subjects of legal relationships could act in accordance with the requirements of law, a legal regulation must be relatively stable; legal acts may not demand impossible things *(lex non cogit ad impossibilia)*; the effect of legal acts is prospective, whereas the retroactive effect of laws and other legal acts is not permitted *(lex retro non agit)*, unless the situation of a subject of legal relationships would be alleviated without prejudice to other subjects of legal relationships *(lex benignior retro agit)*; those violations of law for which responsibility is established in legal acts must be clearly defined; when imposing legal restrictions and responsibility for violations of law, regard must be paid to the requirement of reasonableness and the principle of proportionality; according to the principle of proportionality, the established legal measures must be necessary in a democratic society and suitable for achieving legitimate and universally important objectives (there must be a balance between such objectives and measures); these measures may not restrict the rights of persons more than necessary in order to achieve the said objectives and, if those legal measures are related to sanctions for a violation of law, in such a case, the said sanctions must be proportionate to the committed violation of law; when legally regulating certain social relationships, it is obligatory to pay regard to the requirements of natural justice, comprising, *inter alia*, the necessity to ensure the equality of persons before the law, courts, state institutions, and officials; legal acts must be passed in accordance with the established procedural law-making requirements, including the requirements established by the law-making subject itself; etc.

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

The Constitutional Court's ruling of 13 December 2004

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

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

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

[…]

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

Establishing exceptions to the general legal regulation

The Constitutional Court's ruling of 12 December 2005

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

Using legal terminology in legal acts

The Constitutional Court's ruling of 16 January 2006

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

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

Using notions in legal acts

The Constitutional Court's ruling of 24 January 2006

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

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

The Constitutional Court's ruling of 5 May 2007

In cases where the Constitution does not require that certain relationships indicated therein be regulated specifically by means of a law and where, under the Constitution, the regulation of such relationships is not within the exclusive competence of other institutions exercising state power, *inter alia*, the Government, the legislature may also provide in a law that certain relationships are regulated by the Government or an institution authorised by it. In the Lithuanian legislation, such law-making practice where a law prescribes that certain relationships are regulated by the Government or an institution authorised by it is quite widespread.

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

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

implies that, when the Government adopts a resolution whereby it authorises the respective institution to regulate certain relationships, such an institution must be the one that has this special (professional) competence necessary for regulating the relationships assigned to it by the government resolution.

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

The Constitutional Court's ruling of 27 June 2007

In its acts, when interpreting Paragraph 2 of Article 7 of the Constitution, the Constitutional Court held that: laws are not valid and may not be applied unless they are officially published (ruling of 11 January 2001); the official publication of laws is a necessary condition of their entry into force (ruling of 19 June 2002); there must be established, by means of a law, the procedure for publishing laws and the source of the publication of laws (ruling of 29 October 2003); the publication of laws must allow legal subjects to be certain that the published law is exactly the law that has been adopted by the Seimas or by referendum; such publication of laws is their official publication (ruling of 29 October 2003); the official publication of laws in accordance with the procedure established in the Constitution and laws is a necessary condition not only in order that laws would come into force, but also in order that subjects of legal relationships would know which laws are valid and what their content is and would comply with these laws (rulings of 11 January 2001 and 29 October 2003); there may not be any non-published laws in a democratic state under the rule of law (rulings of 11 January 2001 and 29 October 2003); laws must be officially published (ruling of 29 October 2003); law must be public (rulings of 29 November 2001, 30 May 2003, and 29 October 2003).

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

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

[…]

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

The official publication of an entire legal act is not an objective in itself – this is necessary in order that legal subjects would know what a particular legal act is and that they could have access to an entire legal act and could comply with it. Thus, the purpose and essence of the official publication of an entire legal act is that it becomes accessible to legal subjects and no doubts remain regarding the authenticity of its content.

The legislature must, by means of a law, establish such a legal regulation of the relationships in connection with the official publication of legal acts that ensures that legal acts are accessible to all legal subjects. When doing so, the legislature has broad discretion: taking account of the content, particularities, and variety of legal acts, as well as of other significant circumstances, it may establish various sources and ways of the official publication of legal acts. In this context, it needs to be mentioned that, as the Constitutional Court held in its ruling of 29 October 2003, the Constitution does not *expressis verbis* establish any sources of the official publication of legal acts, nor all possible ways of their publication – the legislature must establish this by means of a law; in regulating these relationships, the legislature may establish a differentiated legal regulation; when establishing it, the legislature must, in all cases, pay regard to the Constitution.

… when establishing the sources and ways of the official publication of legal acts, the legislature must take account of the technical possibilities of publishing legal acts in a certain way. In this context, it also needs to be mentioned that, as it was held by the Constitutional Court, fast technological development determines the dynamism of the legal acts regulating the respective social relationships (ruling of 21 December 2006) and that "electronic communications and telecommunications are undergoing particularly fast development"; thus, "the possibilities of seeking, obtaining, and disseminating information by means of electronic information technologies, *inter alia*, the internet, are constantly expanding"; "therefore, it is necessary that legislation does not fall behind the progress of information technologies and changes determined by such progress in the respective social relationships" (rulings of 19 September 2005 and 21 December 2006). These provisions are also *mutatis mutandis* applicable to the publication of legal acts.

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

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

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

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

Thus, in cases where legal acts include not only textual (written), but also graphical parts (drawings, etc.), especially if such legal acts are of a large volume and complex structure and serious technical problems occur regarding the publication (printing, reproduction) of their graphical parts (also if the expenses of their publication (printing, reproduction) are groundlessly high (taking account of the financial capacities of the

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

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

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

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

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

It should also be emphasised that, in cases where the graphical part of a legal act is published separately from its textual part (in a different source) and/or in a way that is different from that of the publication of its textual part, the requirements, which stem from the Constitution, for the formality and publicity of the publication of legal acts must be followed, and it is necessary to ensure that, due to the separate publication

of the textual and graphical parts of legal acts, no preconditions would emerge for questioning the authenticity of their content.

First of all, it is necessary that, in accordance with the general (regular) procedure of the official publication of legal acts, it would be published in a certain source that a particular legislative decision has been adopted regarding a certain question. Second, it should be clear from the legal acts published in this source that a certain constituent part (constituent parts) of this legal act has (have) not been published therein. Third, it must be clear where the constituent part (constituent parts) of a legal act that was (were) not published in the said source could be accessible. Finally, fourth, the accessibility of the respective part of a legal act (thus, also the entire legal act as a whole) to legal subjects must be ensured in practice; moreover, no reasonable doubts as to the authenticity of the content of the constituent part (constituent parts) of a legal act that was (were) not published in the said source can arise for those legal subjects. If these conditions are followed and, indeed, if the non-publishing of a certain constituent part (constituent parts) of a legal act in the said source can be constitutionally justifiable, naturally, there will be no grounds for stating that such a legal act is "not published" or that it is "published", but this has been done neither publicly nor officially, i.e. by failing to meet the requirements of Paragraph 2 of Article 7 of the Constitution and by failing to pay regard to the constitutional principle of a state under the rule of law. Such ensuring (in the specified cases) of the possibilities of access to the content of the constituent part (constituent parts) of a legal act that was (were) not published in the said source, thus, also access to the content of the entire legal act as a whole, if there are enough solid reasons for that, does not in itself give grounds for questioning the compliance of such a legal act with the Constitution.

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

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

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

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

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

It is also possible to adopt such legal acts that contain information constituting a state secret or other classified information. The Constitutional Court has held that, under the Constitution, the state has the duty to guarantee the secrecy of information that constitutes a state secret; the disclosure of a state secret may pose a threat to or even inflict damage on the sovereignty of the state, its territorial integrity, or other important state interests or the foundations of the life of society and the state; when the relationships linked with state secrets (or other classified information) and their protection are regulated by means of laws, it must be established what persons and under what procedure and conditions can handle state secrets (or other classified information) (ruling of 15 May 2007). The legislature has the duty to establish such ways and procedure of the official publication of legal acts that contain information constituting a state secret or other classified information where the said ways and procedure would guarantee the protection of the secrecy of such information and, at the same time, would not deny the imperatives of the publication of legal acts, which arise from the Constitution, *inter alia*, would ensure the accessibility of legal acts to the respective legal subjects whose rights and duties are enshrined in those legal acts. On the other hand, the Constitutional Court has held that the legal normative acts regulating the relationships linked with constitutional human rights and freedoms and with their implementation may not bear any classification markings at all (ruling of 5 April 2000).

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

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

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

[…]

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

The suspension of the validity of laws

The Constitutional Court's ruling of 5 July 2007

… as the Constitutional Court held in [its decision of 13 November 1997], "the suspension of the validity of laws is not characteristic of lawmaking and, as a rule, is linked with the situations specified in the Constitution". It should be mentioned that such a situation is provided for in Paragraph 4 of Article 106 of

the Constitution, which states that "An application by the President of the Republic to the Constitutional Court, or a resolution of the Seimas, asking for an investigation into the conformity of an act with the Constitution shall suspend the validity of the act".

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

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

The Constitutional Court's ruling of 21 January 2008

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

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

The Constitutional Court's ruling of 29 June 2012

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

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

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

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

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

The Constitutional Court's ruling of 25 January 2016

Amendments to a legal regulation must be made in such a manner that the persons whose legal status is affected by those amendments would have a real possibility of adapting to a new legal situation. Therefore, in order to create the conditions for persons not only to have access to a new legal regulation prior to the

beginning of its validity, but also to adequately prepare for the envisaged changes, it might be necessary to establish a later date of its entry into force. The time period that should be left for adaptation in each concrete situation must be assessed in view of a number of circumstances: the purpose of a law in the legal system and the nature of the social relationships regulated by that law, the circle of subjects to whom it is applied and their possibilities of preparing for the entry into force of the new legal regulation, as well as other important circumstances (rulings of 15 February 2013 and 16 May 2013).

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

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

The Constitutional Court's ruling of 27 April 2016

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

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

The publicity and transparency requirements for law-making procedures

The Constitutional Court's ruling of 8 July 2016

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

in the governance of the state, to criticise the work of state institutions or their officials, and to file complaints against their decisions.

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

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

The Constitutional Court's ruling of 19 June 2018

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

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

1.8.2. The interpretation of law

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

The methods of the interpretation of law

The Constitutional Court's ruling of 23 June 1999

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

The interpretation of law

The Constitutional Court's ruling of 28 March 2006

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

On the other hand, the linguistic method of the interpretation of law is not the only one or universal, and its significance should not be exaggerated. In this context, it should be noted that, as the Constitutional Court has held in its acts (*inter alia*, in the rulings of 25 May 2004 and 13 December 2004) more than once, the Constitution may not be interpreted only literally, by applying only the linguistic (verbal) method; while interpreting the Constitution, it is necessary to apply various methods of the interpretation of law: systemic,

the one of general legal principles, logical, teleological, the one of the intentions of the legislature, the one of precedents, historical, comparative, etc. It should also be held that the same applies to the interpretation of all lower-ranking legal acts (ruling of 16 January 2006).

1.8.3. Legal gaps

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

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

The Constitutional Court's decision of 8 August 2006

The absence of explicit legal provisions regulating certain social relationships in a legal act (part thereof), if a certain legal regulation is neither explicitly nor implicitly established in other legal acts (or in other parts of the same legal act), should be treated as a legal gap – a *lacuna legis*. … Such legal gaps may occur due to various reasons, *inter alia*, due to mistakes in the course of lawmaking, also due to the fact that a particular law-making subject did not regulate those social relationships deliberately. Such gaps, both serious and miner, may also occur after, by its ruling, the Constitutional Court declares a legal regulation (part thereof) implicitly or explicitly established in a certain legal act (articles (parts thereof) of legal acts) to be in conflict with a higher-ranking legal act, *inter alia* (and, first of all), with the Constitution; however, it needs to be emphasised that this does not mean that legal gaps occur after the entry into force of each ruling of the Constitutional Court whereby a certain lower-ranking legal act (part thereof) is ruled to be in conflict with a higher-ranking legal act, *inter alia* (and, first of all), with the Constitution: such legal situations are also possible where the removal of provisions conflicting with the provisions of higher-ranking legal acts, *inter alia*, with the Constitution, from the legal system by means of a ruling of the Constitutional Court, with respect to the application of law, virtually amounts to changing the overall legal regulation, i.e. the establishment of a different overall legal regulation that contains no gaps.

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

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

taking into account the content of those social relationships, be established precisely in the particular legal act (part thereof), since this is required by a certain higher-ranking legal act, *inter alia*, the Constitution itself.

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

In other cases, if a certain legal regulation is neither explicitly nor implicitly established also in other legal acts (or in other parts of the same legal act) and if the non-establishment of the explicit legal regulation in the reviewed legal act (part thereof) cannot be regarded as the above-mentioned implicit legal regulation that supplements and extends an explicitly established legal regulation, the absence of explicit legal provisions regulating the respective social relationships in a reviewed lower-ranking legal act (part thereof) should be treated as such a legal gap that is prohibited by the Constitution (or by a certain other higher-ranking legal act), i.e. as a legislative omission. A legislative omission means that a certain legal regulation is not established in the particular legal act (part thereof), although, under the Constitution (or under some other higher-ranking legal act against which the compliance of the lower-ranking legal act (part thereof) is assessed by the Constitutional Court), it must be established precisely in that particular legal act (part thereof). It needs to be especially emphasised that a legislative omission differs from other legal gaps also from the aspect that it is always the consequence of an action made by the law-making subject that issued a particular legal act, but not that of its failure to act; moreover, it is not the consequence of an action (especially, a lawful one) or failure to act by any other subject; for instance, such a legal gap where certain social relationships are not even begun to be regulated by certain legal acts, although there exists a need for their legal regulation, should not be regarded as a legislative omission; in the same way, a legislative omission cannot occur after the Constitutional Court, by its ruling, finds in a constitutional justice case that a certain legal act (part thereof) is in conflict with a higher-ranking legal act, *inter alia*, with the Constitution.

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

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

The Constitutional Court's decision of 8 August 2006

The removal of legal gaps (without excluding a legislative omission) is a matter of the competence of the respective (competent) law-making subject. However, it is also possible, to a certain extent, to fill legal gaps that are in lower-ranking legal acts in the course of the application of law (*inter alia*, by making use of legal analogy, by applying general legal principles, as well as higher-ranking legal acts, first of all, the Constitution), thus, also in the course of the interpretation of law (*inter alia*, when this is done by the courts of general jurisdiction and specialised courts (established under Paragraph 2 of Article 111 of the Constitution), which administer justice and decide, within their competence, individual cases and have to interpret law so that they would be able to apply it). At the same time, it needs to be emphasised that a court can fill a legal gap that is in a lower-ranking legal act only ad hoc, i.e. by this way of the application of law, a legal gap is removed only as regards the individual social relationship due to which a concrete dispute is decided in the respective case investigated by that court. On the other hand, the judicial (ad hoc) removal of

legal gaps creates the preconditions for forming the same case law in deciding cases of a certain category – the law entrenched in judicial precedents; undoubtedly, the law entrenched in judicial precedents can be substantially changed or modified otherwise later by the legislature (or another competent law-making subject) after it regulates certain social relationships by means of a law (or another legal act) and, thus, removes a particular legal gap already not ad hoc, but by a prospectively directed legal regulation of a general character.

Thus, it is possible to completely remove legal gaps (as well as legislative omissions) only when the law-making institutions issue the respective legal acts. Courts cannot do this. They can fill legal gaps that are in lower-ranking legal acts only ad hoc, since courts administer justice, but they are not legislative institutions (in the positive and broadest sense of this term); such restrictiveness of the possibilities of courts in this area is especially evident when gaps in substantive law are confronted. However, in all cases, there is an undeniable possibility for courts to fill ad hoc a legal gap that is in a lower-ranking legal act. If such powers of courts were denied or not recognised, if the possibilities of courts to apply law, first of all, supreme law – the Constitution, depended on whether a certain law-making subject did not leave gaps in a legal regulation (laid down by it in legal acts), and if courts were able to decide cases only after these legal gaps are filled by way of lawmaking, then it would have to be stated that courts, when they decide cases, apply not law and, first of all, not supreme law – the Constitution, but only a law (in the general sense of this term), that they do not administer justice according to law, but only formally apply articles (parts thereof) of legal acts, that constitutional values, *inter alia*, the rights and freedoms of a person, may be injured (and may be neither compensated nor redressed) solely because a particular law-making subject has failed to legally regulate certain relationships (or has legally regulated them, but not intensively enough), i.e. that, although certain values are entrenched in the Constitution, they, under the Constitution, are not properly defended and protected. This would not be in line with the social and constitutional mission of courts. Besides, this would mean that law is treated only as its textual form and is identified with its textual form.

Removing legal gaps and filling them ad hoc

The Constitutional Court's ruling of 7 June 2007

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

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

The Constitutional Court's ruling of 11 December 2009

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

Removing legal gaps and filling them ad hoc

The Constitutional Court's ruling of 25 November 2019

… as held by the Constitutional Court, the removal of legal gaps is a matter within the competence of the respective (competent) law-making entity; it is also possible to fill legal gaps to a certain extent in the course of applying law and, thus, also in the course of interpreting law, *inter alia*, by courts, which administer justice and decide individual cases within their competence and are obliged to interpret law in order they

could apply it; courts can fill legal gaps on an ad hoc basis, i.e. they can remove them with regard to an individual social relationship due to which a dispute is decided in the proceedings before the court; it is possible to completely remove legal gaps only when the law-making institutions adopt the respective legal acts; the possibility of filling legal gaps on an ad hoc basis does not mean that the legislature does not have the duty, paying regard to the Constitution and within a reasonable time period, to establish the proper legal regulation of particular relationships by means of a law (*inter alia*, the decision of 8 August 2006 and the ruling of 7 June 2007). The constitutional duty to establish the proper legal regulation of particular relationships by means of legal acts in accordance with the Constitution and within a reasonable time period also applies *mutatis mutandis* to other law-making entities.

Removing legal gaps and filling them ad hoc

The Constitutional Court's ruling of 8 July 2020

… the possibility for courts to fill legal gaps on an ad hoc basis does not mean that the legislature does not have the duty, paying regard to the Constitution and within a reasonable time period, to establish the proper legal regulation of particular relationships by means of a law (ruling of 7 June 2007). It should be noted that such a duty is also binding on other law-making entities in cases where a legal gap, *inter alia*, a legislative omission, is in a legal act ranking lower than a law.

1.8.4. The hierarchy of legal acts

1.8.4.1. General provisions

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

The Constitutional Court's ruling of 13 December 2004

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

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

… under the Constitution, a legal regulation related to defining the content of human rights and freedoms or consolidating the guarantees of their implementation may be established only by means of a law. On the other hand, in cases where the Constitution does not require that particular relationships linked with human rights and with their implementation be regulated by means of a law, such relationships may

also be regulated by means of substatutory acts – acts that regulate the process (procedural) relationships of implementing human rights, the procedure for implementing individual human rights, etc.; however, under no circumstances may substatutory acts establish such a legal regulation of the relationships linked with human rights and with their implementation that would compete with the one established in a law.

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

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

The hierarchy of legal acts

The Constitutional Court's decision of 20 September 2005

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

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

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

The Constitutional Court's decision of 29 December 2006

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

The hierarchy of legal acts

The Constitutional Court's ruling of 9 May 2014

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

1.8.4.2. The Constitution

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

The Constitutional Court's ruling of 25 May 2004

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

The Constitution is the highest-ranking legal act. The Constitution reflects a social contract – the obligation democratically assumed by all citizens of the Republic of Lithuania to the current and future generations to live under the fundamental rules consolidated in the Constitution and to obey those rules in

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

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

The Constitutional Court's ruling of 24 January 2014

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

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

The Constitutional Court's ruling of 11 July 2014

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

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

In view of the foregoing, it should be emphasised that the Constitution reflects the obligation of the national community – the civil Nation – to create and reinforce the state by following the fundamental rules consolidated in the Constitution; the Constitution lays down the legal foundation for the common life of the Nation – the national community. Thus, it should also be emphasised that the Constitution equally binds the

national community – the civil Nation itself; therefore, the supreme sovereign power of the Nation may be executed, *inter alia*, directly (by referendum) only in observance of the Constitution.

The concept, nature, and purpose of the Constitution

The Constitutional Court's ruling of 30 July 2020

… the Constitution is supreme law; the source of the Constitution is the national community itself – the civil People. The Constitution reflects a social contract – the obligation democratically assumed by all citizens of the Republic of Lithuania to the current and future generations to live under the fundamental rules consolidated in the Constitution and to obey those rules in order to ensure the legitimacy of state power and the lawfulness of its decisions, as well as human rights and freedoms, so that concord would exist in society (*inter alia*, the ruling of 25 May 2004, the decision of 20 April 2010, and the ruling of 11 July 2014). As the highest-ranking legal act and a social contract, the Constitution is based on universal and unquestionable values – the sovereignty belonging to the People, democracy, the recognition of human rights and freedoms and respect for them, respect for law and the rule of law, the limitation of the scope of powers, the duty of state authority institutions to serve the people and the responsibility of these institutions to society, civic consciousness, justice, and the striving for an open, just, and harmonious civil society and a state under the rule of law (*inter alia*, the rulings of 25 May 2004, 24 September 2009, and 11 July 2014). Having adopted the Constitution, the civil People, as the national community, laid down the normative basis for the common life and consolidated the state as the common good of all society (*inter alia*, the rulings of 25 May 2004, 24 September 2009, and 24 January 2014). The Constitution equally binds the national community itself – the civil People; therefore, the supreme sovereign power of the People may be executed, *inter alia*, directly (by referendum), only in observance of the Constitution (ruling of 11 July 2014).

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

1.8.4.2.1. The supremacy of the Constitution

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

The Constitutional Court's ruling of 17 October 1995

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

The principle of the supremacy of the Constitution

The Constitutional Court's ruling of 24 December 2002

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

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

The principle of the supremacy of the Constitution means that the Constitution takes an exceptional, the highest, place in the hierarchy of legal acts, that no legal act may be in conflict with the Constitution, that no one is permitted to violate the Constitution, that the constitutional order must be protected, and that the Constitution itself consolidates the mechanism making it possible to determine whether legal acts (parts thereof) are in conflict with the Constitution. In this respect, the principle of the supremacy of the Constitution, which is established in the Constitution, is inseparably linked with the constitutional principle of a state under the rule of law, which is a universal constitutional principle upon which the entire Lithuanian legal system and the Constitution itself are based. The violation of the principle of the supremacy of the Constitution would mean that the constitutional principle of a state under the rule of law is also violated.

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

The Constitutional Court's ruling of 29 October 2003

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

[…]

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

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

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

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

… the duty of the legislature and other law-making subjects to revise all legal acts that were adopted by them before the entry into force of the Constitution and are still in force, also the legal acts that were passed by no longer existing institutions of the State of Lithuania and still remain in force and, after the entry into force of the Constitution, regulate the relationships that belong to the sphere of regulation by the respective law-making subject, as well as the legal acts that were passed before the restoration of the independent State

of Lithuania but remained in force after the restoration of the independent State of Lithuania and, after the entry into force of the Constitution, regulate the relationships that belong to the sphere of regulation by the respective law-making subject, as well as the duty to assess whether those legal acts, in the opinion of that law-making subject, are in conflict with the Constitution, also implies their duty to ensure that those legal acts are brought in line with the provisions of the Constitution not only in terms of the content and scope of the legal regulation established in such legal acts, including the form of such legal acts, but also in terms of the publication of those legal acts as required by Paragraph 2 of Article 7 of the Constitution.

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

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

The Constitutional Court's ruling of 1 July 2004

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

The principle of the supremacy of the Constitution

The Constitutional Court's decision of 19 November 2012

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

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

The Constitutional Court's ruling of 11 July 2014

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

A fundamental requirement for a democratic state under the rule of law is the principle of the supremacy of the Constitution, which is consolidated in Paragraph 1 of Article 7 of the Constitution, where it is prescribed that any law or other act that contradicts the Constitution is invalid; this principle is, from various aspects, also consolidated in other articles of the Constitution, *inter alia*, Paragraph 1 of Article 6 thereof, which stipulates that the Constitution is an integral and directly applicable act (rulings of 24 December 2002, 29 October 2003, 5 March 2004, and 20 March 2007). The principle of the supremacy of the Constitution means that the Constitution takes an exceptional, the highest, place in the hierarchy of legal acts; no legal act may be in conflict with the Constitution; no one is permitted to violate the Constitution; the constitutional order must be protected (rulings of 24 December 2002, 29 October 2003, 5 March 2004, and 20 March 2007, the decision of 20 November 2009, and the ruling of 29 March 2012). The Constitutional Court has also held that all provisions of the Constitution should be interpreted by taking into account the principle of the supremacy of the Constitution (ruling of 5 March 2004). In its ruling of 13 December 2004, the Constitutional Court emphasised that the Constitution is the highest-ranking legal act, supreme law, and the measure of the lawfulness and legitimacy of all other legal acts; the discretion of all law-making subjects is limited by supreme law – the Constitution; all legal acts, as well as the decisions of all state and municipal institutions and officials, must comply with and not contradict the Constitution.

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

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

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

The system of constitutional values

The Constitutional Court's ruling of 23 October 2002

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

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

The Constitutional Court's ruling of 25 November 2002

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

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

The Constitutional Court's ruling of 24 December 2002

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

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

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

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

The Constitutional Court's ruling of 30 May 2003

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

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

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

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

The Constitutional Court's ruling of 30 May 2003

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

… The principle of a state under the rule of law, which is consolidated in the Constitution, implies, *inter alia*, the continuity of the jurisprudence (ruling of 12 July 2001). This means that the Constitutional Court, while deciding analogous constitutional disputes, follows the doctrine that was formed in previous cases and reveals the content of the Constitution. When considering the compliance of laws and other legal

acts (parts thereof) with the Constitution, the Constitutional Court develops the concept of constitutional provisions that was presented in its previous rulings and other acts, and it reveals new aspects of a particular regulation established by the Constitution, where such aspects are necessary for the consideration of the specific case.

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

The Constitutional Court's ruling of 29 October 2003

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

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

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

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

The Constitutional Court's ruling of 25 May 2004

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

expressed by the entirety of the constitutional legal regulation, i.e. it is expressed by all provisions of the Constitution: by the norms of the Constitution directly set out in the text of the Constitution and by the principles of the Constitution, including those that stem from the entirety of the constitutional legal regulation and the meaning of the Constitution as an act that consolidates and protects the system of the major values of the Nation, as well as provides for the guidelines for the entire legal system.

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

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

The interpretation of the Constitution

The Constitutional Court's ruling of 13 December 2004

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

[…]

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

The interpretation of the Constitution

The Constitutional Court's ruling of 28 March 2006

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

[…]

… the Constitutional Court has held that constitutional norms and principles may not be interpreted on the basis of legal acts adopted by the legislature and other law-making subjects, since thereby the supremacy

of the Constitution in the legal system would be denied (rulings of 12 July 2001, 1 July 2004, and 13 December 2004 and the decision of 10 February 2005).

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

The Constitutional Court's ruling of 9 May 2006

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

The interpretation of the Constitution

The Constitutional Court's ruling of 27 February 2012

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

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

The Constitutional Court's ruling of 24 January 2014

… amendments to the Constitution change the content of the provisions of the Constitution and interrelations between those provisions; also, the balance of the values consolidated in the Constitution might be changed; if some provisions of the Constitution are amended, there might be changes in the content of other provisions thereof, as well as in the content of the overall constitutional legal regulation. However, when amendments to the Constitution are made, the imperative that the Constitution is an integral act must be complied with (Paragraph 1 of Article 6 of the Constitution). The Constitutional Court has held on more

than one occasion that all provisions of the Constitution are interrelated to the degree that the content of some provisions of the Constitution determines the content of other provisions thereof; the provisions of the Constitution constitute a single and harmonious system; no provision of the Constitution may be opposed to other provisions of the Constitution. The nature of the Constitution as the highest-ranking legal act and the idea of constitutionality imply that there are not, nor can there be, any gaps or internal contradictions in the Constitution (rulings of 25 May 2004, 13 December 2004, and 28 March 2006).

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

1.8.4.2.3. The constituent part of the Constitution

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

The Constitutional Court's ruling of 29 October 2003

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

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

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

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

The Constitutional Court's ruling of 14 March 2006

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

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

14 August 2004. By means of it, membership of the Republic of Lithuania in the European Union was constitutionally confirmed (ruling of 13 December 2004).

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

The Constitutional Court's ruling of 15 March 2011

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

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

[…]

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

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

The Constitutional Court's ruling of 30 July 2020

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

"The constituent part of the Constitution of the Republic of Lithuania shall be:

the Constitutional Law 'On the State of Lithuania' of 11 February 1991;

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

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

the Constitutional Act 'On Membership of the Republic of Lithuania in the European Union' of 13 July 2004."

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

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

The Constitutional Court's ruling of 30 July 2020

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

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

European Union is a constitutional imperative based on the expression of the sovereign will of the People; full membership by the Republic of Lithuania in the European Union is a constitutional value (*inter alia*, the rulings of 24 January 2014, 11 January 2019, and 6 February 2020).

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

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

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

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

The Constitutional Court's ruling of 24 December 2002

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

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

Thus, under Paragraph 3 of Article 149 of the Constitution, in a law amending the Constitution, the Seimas may set the date when the law amending the Constitution comes into force; however, it is not permitted to set an earlier date than one month after the adoption of the law amending the Constitution. While adopting a law amending the Constitution, the Seimas may establish that a law amending the Constitution comes into force only at a later date than one month after the adoption of this law. If a law amending the Constitution does not set a date for its entry into force, then, under the Constitution, such a law amending the Constitution comes into force one month after its adoption.

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

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

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

The stability of the Constitution

The Constitutional Court's ruling of 28 March 2006

The Constitutional Court has held that the Constitution, as supreme law, must be a stable act (rulings of 16 January 2006 and 14 March 2006). The stability of the Constitution is such its feature that, together with its other features (*inter alia*, and, first of all, with the special, supreme, legal force of the Constitution) makes

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

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

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

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

The Constitutional Court's ruling of 28 March 2006

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

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

… it may also be necessary to reinterpret the official constitutional doctrinal provisions so that the official constitutional doctrine would be modified when such an amendment to the Constitution is made

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

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

The Constitutional Court's ruling of 28 March 2006

No amendments or supplements made to a higher-ranking legal act (including the Constitution) after the Constitutional Court declared, referring to the previous provisions of the Constitution, a certain legal act (part thereof) passed by the Seimas, the President of the Republic, or the Government or adopted by referendum to be in conflict with a certain higher-ranking legal act, *inter alia* (and, first of all), with the Constitution, may bring back the legal act (part thereof) that was declared to be in conflict with a certain higher-ranking legal act, *inter alia* (and, first of all), with the Constitution, to the Lithuanian legal system. Under the Constitution, the Constitutional Court does not have the powers to bring back such legal acts (parts thereof) to the Lithuanian legal system, either. In the same vein, no amendments or supplements made to a higher-ranking legal act (including the Constitution) after the Constitutional Court declared, referring to the previous provisions of the Constitution, a certain legal act (part thereof) passed by the Seimas, the President of the Republic, or the Government or adopted by referendum to be in compliance with a certain higher-ranking legal act, *inter alia* (and, first of all), with the Constitution, mean that the decision on the said legal act can or must be changed with retroactive effect. On the other hand, when an amendment to the Constitution is made, the legislature and other law-making subjects must harmonise the legal acts that they have passed and that are still valid with the amended legal regulation; however, this does not imply that the examined constitutional justice cases on the compliance of a certain previous legal regulation with a certain higher-ranking legal regulation, *inter alia* (and, first of all), with the Constitution, must be renewed or that the decisions adopted therein must be reviewed and changed.

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

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

but also would lead to the denial of the stability of the Constitution, the predictability of decisions adopted by the Constitutional Court, and the legitimate expectations of various legal subjects where the said expectations are created by the aforementioned decisions.

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

The Constitutional Court's ruling of 24 January 2014

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

[…]

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

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

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

The substantive limitations on the alteration of the Constitution

The Constitutional Court's ruling of 24 January 2014

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

[…]

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

[…]

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

It has been mentioned that the imperative stems from Paragraph 1 of Article 6 of the Constitution whereby no amendments to the Constitution may violate the harmony of the provisions of the Constitution or the harmony of the values consolidated in those provisions. In view of this, it should be noted that, under the Constitution, no amendments may be made to the Constitution that would deny the provisions of the Constitutional Act on the Non-Alignment of the Republic of Lithuania to Post-Soviet Eastern Unions, with the exception of the cases where the respective provisions of this constitutional act would be altered under the same procedure as provided for in Article 2 of the Constitutional Law on the State of Lithuania.

[…]

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

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

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

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

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

[…]

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

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

It has been mentioned that amendments to the Constitution may not violate the harmony of the provisions of the Constitution or the harmony of the values consolidated in those provisions. In view of this, it should be noted that, under the Constitution, the Seimas is not permitted to introduce any such amendments to the Constitution that would deny the provisions of Chapter I "The State of Lithuania" and Chapter XIV "The Alteration of the Constitution" of the Constitution. If the Seimas adopted such amendments to the Constitution, it would also violate the principle, consolidated in Paragraph 2 of Article 5 of the Constitution, that the scope of powers is limited by the Constitution.

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

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

The Constitutional Court's ruling of 24 January 2014

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

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

for making amendments to the Constitution compared with the procedure for amending constitutional and ordinary laws (rulings of 14 March 2006 and 28 March 2006).

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

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

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

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

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

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

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

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

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

Paragraphs 1 and 2 of Article 149 of the Constitution establish a special procedure for the promulgation of a law amending the Constitution: the President of the Republic signs an adopted law on the alteration of

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

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

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

It should be noted that the provision of Paragraph 3 of Article 149 of the Constitution is also applied to the situation specified in Paragraph 2 of the same article, where the Speaker of the Seimas officially promulgates a law amending the Constitution: the provision of Paragraph 2 of Article 149 of the Constitution, under which, if the President of the Republic does not sign and promulgate a law amending the Constitution within five days, this law comes into force "when the Speaker of the Seimas signs and promulgates it", must be interpreted in conjunction with the provision of Paragraph 3 of this article and cannot deny that provision.

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

The Constitutional Court's ruling of 24 January 2014

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

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

contains no indication of a specific article (paragraph or item thereof) of the Constitution that is being proposed to be amended or supplemented, there would be no object for consideration at the Seimas.

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

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

The Constitutional Court's ruling of 24 January 2014

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

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

It should also be noted that the exclusive right to submit a motion to alter or supplement the Constitution to the Seimas, as established in Paragraph 1 of Article 147 of the Constitution for the subjects that have the right to submit a motion to alter the Constitution, i.e. a group of not less than 1/4 of all the members of the Seimas or not less than 300 000 voters, means that, first of all, these subjects, when they submit their amendment to the Constitution, have the right to assess the objective legal necessity of such an amendment; this right also means that only the authorised representatives of the said subjects can submit a draft law amending the Constitution to the Seimas for consideration, i.e. to present such a draft at a sitting of the Seimas.

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

The Constitutional Court's ruling of 24 January 2014

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

It has been mentioned that, under Paragraph 1 of Article 147 of the Constitution, the subjects specified therein that propose a motion to alter the Constitution, i.e. a group of not less than 1/4 of all the members of the Seimas or not less than 300 000 voters, have the same right to submit a motion for amending the

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

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

It should be noted that the exclusive right established in Paragraph 1 of Article 147 of the Constitution for the subjects specified therein, i.e. a group of not less than 1/4 of all the members of the Seimas or not less than 300 000 voters, to submit a motion to alter or supplement the Constitution to the Seimas does not mean that the Seimas, when considering the submitted motion, is not allowed at all to change the text of a draft law amending the Constitution. However, changes in the text of a draft law amending the Constitution cannot deny the exclusive right to submit a motion to alter or supplement the Constitution to the Seimas, which is established in Paragraph 1 of Article 147 of the Constitution for a group of not less than 1/4 of all the members of the Seimas or not less than 300 000 voters; as mentioned before, under the Constitution, only those draft laws amending the Constitution that are submitted by a group of not less than 1/4 of all the members of the Seimas or not less than 300 000 voters may be considered and voted on by the Seimas; the Seimas may not consider and vote on any such a motion to alter or supplement the Constitution that would be proposed by subjects other than those specified in Paragraph 1 of Article 147 of the Constitution. Therefore, under the Constitution, when the Seimas considers the draft laws amending the Constitution that have been submitted by the subjects specified in Paragraph 1 of Article 147 of the Constitution, it may introduce only such modifications to the proposed draft laws that do not affect the content of those draft laws in substance, i.e. non-substantial modifications that are aimed at editing the proposed draft amendments to the Constitution in order to improve the texts of those draft laws in terms of the Lithuanian language and legal technique or that make the proposed draft formulations more accurate or concrete without changing the scope of the proposed constitutional legal regulation.

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

In this context, it should also be noted that a substantially changed draft law amending the Constitution must be regarded as a new draft law – a new motion to alter or supplement the Constitution, which can be

submitted, according to Paragraph 1 of Article 147 of the Constitution, by a group of not less than 1/4 of all the members of the Seimas or not less than 300 000 voters.

[…]

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

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

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

The Constitutional Court's ruling of 11 July 2014

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

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

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

– it is not permitted to make any such amendments to the Constitution that would deny at least one of the constitutional values that constitute the foundation of the State of Lithuania as the constitutionally consolidated common good of all society – the independence of the state, democracy, the republic, and the

innate nature of human rights and freedoms, with the exception of the cases where Article 1 of the Constitution would be altered in the manner prescribed by Paragraph 1 of Article 148 of the Constitution, or Article 1 of the Constitutional Law on the State of Lithuania, which is a constituent part of the Constitution, would be altered in the manner prescribed by Article 2 of this law;

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

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

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

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

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

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

The procedure for amending the constitutional acts forming a constituent part of the Constitution
The Constitutional Court's ruling of 30 July 2020

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

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

The Constitutional Court's ruling of 30 July 2020

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

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

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

The Constitutional Court's ruling of 30 July 2020

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

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

the Constitution and Article 1 of the Constitutional Law on the State of Lithuania (rulings of 24 January 2014 and 11 July 2014).

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

The Constitutional Court's ruling of 30 July 2020

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

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

Thus, the provisions of the Law on the Procedure for the Entry into Force of the Constitution of the Republic of Lithuania, with the exception of Article 5 thereof, consolidate the transitional constitutional regulation related to the entry into force and implementation of the provisions of the Constitution, i.e. the provisions of the Law on the Procedure for the Entry into Force of the Constitution of the Republic of Lithuania, with the exception of Article 5 thereof, are not of continuing validity and can no longer be applied after they have been implemented (it should be mentioned that the provisions of Articles 1, 3, 4, and 6 to 8 of the Law on the Procedure for the Entry into Force of the Constitution of the Republic of Lithuania have already been implemented). In view of this, the provisions of the Law on the Procedure for the Entry into Force of the Constitution of the Republic of Lithuania, with the exception of Article 5 thereof, may not be altered.

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

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

The Constitutional Court's ruling of 30 July 2020

As held by the Constitutional Court, the provisions of Articles 1 and 2 of the Constitutional Act on Membership of the Republic of Lithuania in the European Union laid down the constitutional foundations of membership of the Republic of Lithuania in the European Union; if these constitutional foundations were not consolidated in the Constitution, the Republic of Lithuania could not be a full member of the European Union; these constitutional foundations of membership of the Republic of Lithuania in the European Union were consolidated in the Constitution by acting upon the will of the People, expressed in the referendum,

that the Republic of Lithuania would be a member of the European Union (rulings of 24 January 2014 and 11 July 2014). In view of this, the Constitutional Court also held that the said foundations in themselves and the expression of the sovereign will of the People, as the source of these foundations, determine the requirement that the provisions of Articles 1 and 2 of the Constitutional Act on Membership of the Republic of Lithuania in the European Union be altered or repealed only by referendum (rulings of 24 January 2014 and 11 July 2014).

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

Laws amending the Constitution (amendments to the Constitution)

The Constitutional Court's ruling of 30 July 2020

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

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

The Constitutional Court's ruling of 30 July 2020

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

The substantive limitations on the alteration of the Constitution

The Constitutional Court's ruling of 30 July 2020

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

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

– it is not permitted to adopt any such amendments to the Constitution that would abolish the innate nature of human rights and freedoms, democracy, or the independence of the state (ruling of 11 July 2014); this, *inter alia*, means that … Article 1 of the Constitution, as well as the provision "The State of Lithuania shall be an independent democratic republic" of Article 1 of the Constitutional Law on the State of Lithuania,

may not be amended in such a way as to deny the fundamental constitutional values – the independence of the state, democracy, or the innate nature of human rights and freedoms;

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

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

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

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

– the Seimas is not permitted to make any such amendments to the Constitution that would deny the provisions of Chapter I "The State of Lithuania" and Chapter XIV "The Alteration of the Constitution" of the Constitution; it is also not permitted to introduce by referendum any such amendments to the Constitution that would, without respectively amending the provisions of Chapter I "The State of Lithuania" and Chapter XIV "The Alteration of the Constitution" of the Constitution, establish the constitutional regulation contrary to the provisions of Chapters I and XIV of the Constitution (rulings of 24 January 2014 and 11 July 2014).

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

The procedural limitations on the alteration of the Constitution

The Constitutional Court's ruling of 30 July 2020

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

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

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

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

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

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

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

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

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

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

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

a constitutional law, comes into force after it is signed and officially promulgated by the Speaker of the Seimas (Paragraph 2).

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

1.8.4.3. International and EU law

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

The Constitutional Court's conclusion of 24 January 1995

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

[…]

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

[…]

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

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

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

The Constitutional Court's ruling of 17 October 1995

The legal system of the Republic of Lithuania is based on the fact that any law or other legal act, as well as any international treaty of the Republic of Lithuania, may not be in conflict with the Constitution, since Paragraph 1 of Article 7 of the Constitution prescribes: "Any law or other act that contradicts the

Constitution shall be invalid." As such, this constitutional provision cannot render any law or international treaty invalid, but it requires that the provisions of laws and international treaties be not in conflict with the provisions of the Constitution. Otherwise, the Republic of Lithuania would not be able to ensure the legal protection of the rights of the parties of international treaties, which arise from those treaties, and this would in turn hinder the fulfilment of the obligations according to the concluded international treaties. … it is important that a consistent procedure for concluding, executing, and terminating international treaties would be established and that it would be in conformity with the provisions of the Constitution concerning international treaties …

[…]

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

[…]

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

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

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

The Constitutional Court's ruling of 9 December 1998

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

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

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

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

The Constitutional Court's ruling of 29 December 2004

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

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

The Constitutional Court's ruling of 14 March 2006

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

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

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

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

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

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

The Constitutional Court's ruling of 14 March 2006

Under Paragraph 2 of the Constitutional Act on Membership of the Republic of Lithuania in the European Union, the norms of European Union law are a constituent part of the legal system of the Republic of Lithuania; where it concerns the founding Treaties of the European Union, the norms of European Union law are applied directly, while in the event of the collision of legal norms, they have supremacy over the laws and other legal acts of the Republic of Lithuania.

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

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

The Constitutional Court's ruling of 21 June 2011

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

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

The Constitutional Court's ruling of 5 September 2012

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

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

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

[…]

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

… in Lithuania, the system of parallel harmonisation of international and domestic law is applied, which is based on the rule that international treaties are transformed in the legal system of the country (i.e. they are incorporated into it) (rulings of 17 October 1995 and 18 December 1997). Under Paragraph 3 of Article 138 of the Constitution, international treaties ratified by the Seimas are a constituent part of the legal system of the Republic of Lithuania. Interpreting this provision of the Constitution, the Constitutional Court has held that it means that international treaties ratified by the Seimas acquire the legal force of a law (conclusion of 24 January 1995, the rulings of 17 October 1995 and 14 March 2006, and the decisions of 25 April 2002 and 7 April 2004). Thus, in the legal system of Lithuania, the Convention has the legal force of a law (ruling of 16 January 2007). Protocol No 1 to the Convention also has the legal force of a law.

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

Consequently, when the international obligations of the Republic of Lithuania are implemented in domestic law, account must be taken of the principle of the supremacy of the Constitution, which is consolidated in Paragraph 1 of Article 7 thereof. As emphasised by the Constitutional Court, the legal system

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

[…]

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

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

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

The Constitutional Court's ruling of 18 March 2014

… under Paragraph 3 of Article 138 of the Constitution, international treaties ratified by the Seimas are a constituent part of the legal system of the Republic of Lithuania. In this context, it should be noted that the said provision should be interpreted in the light of the principle of the supremacy of the Constitution. As the Constitutional Court emphasised in its rulings of 25 May 2004 and 24 January 2014, the Constitution is supreme law.

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

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

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

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

The Constitutional Court's decision of 20 December 2017

… the constitutional imperative of the full participation of the Republic of Lithuania in the European Union also implies the constitutional obligation of the Republic of Lithuania to properly implement the requirements of European Union law. European Union law is a source of the interpretation of the law of the Republic of Lithuania, *inter alia*, the Constitution, in those areas in which, under Article 1 of the Constitutional Act on Membership of the Republic of Lithuania in the European Union, the Republic of Lithuania shares with or confers on the European Union the competences of its state institutions. … there are no grounds for interpreting the provisions of the Constitution linked to the areas [of shared competence between the European Union and the Member States] … differently from the manner in which the specified areas are regulated under European Union law.

1.8.4.4. Constitutional laws

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

The Constitutional Court's ruling of 24 December 2002

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

In its ruling of 2 April 2001, the Constitutional Court held that constitutional laws differ from other laws as regards the procedure for their adoption and amendment. The special place of constitutional laws in the system of legal acts is determined by the Constitution itself. Constitutional laws may not be amended or

repealed by means of laws. Thus, it is ensured that the social relationships regulated by means of constitutional laws would not be regulated in a different manner and that the greater stability of the social relationships regulated by means of constitutional laws would be guaranteed. Constitutional laws may not be in conflict with the Constitution, and laws may not be in conflict with the Constitution and constitutional laws.

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

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

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

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

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

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

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

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

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

[…]

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

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

The Constitutional Court's ruling of 30 July 2020

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

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

The Constitutional Court's ruling of 30 July 2020

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

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

The Constitutional Court's ruling of 30 July 2020

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

Constitutional laws are not a constituent part of the Constitution

The Constitutional Court's ruling of 30 July 2020

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

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

The Constitutional Court's ruling of 30 July 2020

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

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

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

The Constitutional Court's ruling of 30 July 2020

… constitutional laws adopted in accordance with the procedure laid down in Paragraph 3 of Article 69 of the Constitution may not contradict, *inter alia*, the Constitutional Law of 11 February 1991 on the State of Lithuania, the Constitutional Act of 8 June 1992 on the Non-Alignment of the Republic of Lithuania to Post-Soviet Eastern Unions, the Law of 25 October 1992 on the Procedure for the Entry into Force of the

Constitution of the Republic of Lithuania, and the Constitutional Act of 13 July 2004 on Membership of the Republic of Lithuania in the European Union, which all are a constituent part of the Constitution under Article 150 thereof.

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

The Constitutional Court's ruling of 30 July 2020

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

Constitutional laws and the procedure for their adoption and amendment

The Constitutional Court's ruling of 30 July 2020

Article 69 of the Constitution prescribes:

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

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

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

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

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

[…]

Interpreting these provisions of the Constitution, the Constitutional Court has held that, under the Constitution, constitutional laws are: (1) constitutional laws directly specified in the Constitution and adopted in accordance with the procedure laid down in Paragraph 3 of Article 69 of the Constitution; (2) constitutional laws included in the list of constitutional laws and adopted in accordance with the procedure laid down in Paragraph 3 of Article 69 of the Constitution (rulings of 2 April 2001, 24 December 2002, and 14 March 2006).

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

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

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

The Constitutional Court's ruling of 30 July 2020

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

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

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

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

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

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

The Constitutional Court's ruling of 30 July 2020

It should be emphasised that, according to Paragraph 3 of Article 69 of the Constitution, the list of constitutional laws may not be meaningless. As mentioned before, the inclusion of a law in the list of constitutional laws, under the Constitution, means that, in this way, it is ensured that the social relationships

governed by means of constitutional laws will not be regulated by laws in a different manner and that the greater stability of the social relationships governed by means of constitutional laws will be guaranteed.

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

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

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

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

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

context of the constitutional principle of a state under the rule of law, to adopt the constitutional laws specified in this constitutional law, would be meaningless.

The procedure for the adoption and amendment of constitutional laws

The Constitutional Court's ruling of 30 July 2020

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

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

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

Paragraph 1 of Article 71 of the Constitution prescribes that, within ten days of receiving a law adopted by the Seimas, the President of the Republic either signs and officially promulgates the law or, upon reasonable grounds, refers it back to the Seimas for reconsideration. … under Paragraph 1 of Article 71 of the Constitution, the President of the Republic has the right of a delaying veto, *inter alia*, over constitutional laws. Paragraph 2 of Article 72 of the Constitution prescribes that "The law reconsidered by the Seimas shall be deemed adopted if the amendments and supplements submitted by the President of the Republic are adopted, or if more than 1/2 of all the Members of the Seimas vote for the law, or, in cases where such a law is a constitutional law, if not less than 3/5 of all the Members of the Seimas vote in favour thereof".

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

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

The Constitutional Court's ruling of 30 July 2020

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

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

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

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

The legal force of constitutional laws adopted by referendum

The Constitutional Court's ruling of 30 July 2020

It should be mentioned that, as held by the Constitutional Court, under the Constitution, there may not be and there is no confrontation between the supreme sovereign power executed by the People directly and

the supreme sovereign power executed by the People through their democratically elected representatives – members of the Seimas; the direct (through a referendum) and indirect (through the representation of the People – the Seimas) forms of the execution of supreme sovereign power by the People may not be opposed against each other (ruling of 11 July 2014).

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

1.8.4.5. Laws

The supremacy of laws over substatutory acts

The Constitutional Court's ruling of 5 March 2004

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

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

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

It is not allowed to interpret the content of laws on the basis of the interpretation of their content provided in substatutory legal acts

The Constitutional Court's ruling of 12 December 2005

… the content of the legal regulation established in laws may not be interpreted on the basis of the interpretation of their content provided by the Government or other institutions when they, within their competence, pass substatutory legal acts in order to implement the provisions of particular laws.

The supremacy of laws over substatutory acts; there is no delegated legislation in Lithuania

The Constitutional Court's ruling of 28 September 2011

Substatutory acts passed by the Seimas may not regulate those [social] relationships that, under the Constitution, must be regulated by means of a law (ruling of 13 December 2004). The Seimas, while resolving the issues that are the subject matter of regulation by means of laws, may not choose the form of a resolution, because a resolution is a lower-ranking legal act (ruling of 19 January 1994). Substatutory legal acts may not replace laws and may not create any norms of a general character that would compete with the norms established in laws, because the supremacy of laws over substatutory acts, which is consolidated in the Constitution, would thus be violated (rulings of 21 August 2002 and 13 December 2004).

The Constitutional Court has held that the legislature may define the content of the notions used in laws; however, the requirement to pay regard to the hierarchy of legal acts, which stems from the Constitution, *inter alia*, from the constitutional principle of a state under the rule of law, implies that the content of the notions used in laws may be defined (*inter alia*, interpreted) only by means of a law and not by means of a lower-ranking legal act (ruling of 13 November 2006).

[…]

The Constitutional Court has held that there is no delegated legislation in Lithuania (rulings of 26 October 1995, 19 December 1996, 3 June 1999, 5 March 2004, and 13 December 2004); therefore, the Seimas – the legislature – may not assign the Government or other institutions to regulate, by means of substatutory legal acts, those [social] relationships that, under the Constitution, must be regulated by means of laws, and the Government may not accept any such powers. The said relationships may not be regulated by means of substatutory legal acts passed by the Seimas, either (ruling of 13 December 2004). It is clear from the competence of the Seimas, which is established in Article 67 of the Constitution, as well as from the principle of the separation of powers, which is consolidated in Article 5 of the Constitution, that the Seimas may not give the Government any direct instructions of a normative character otherwise than under the legislative procedure for the adoption of laws (ruling of 19 January 1994).

In its ruling of 13 December 2004, the Constitutional Court held that failure to follow the form of a legal act where the Constitution requires that certain relationships be regulated by means of a law, but they are regulated by means of a substatutory act (irrespective of whether such relationships are, from any aspect, additionally regulated in a law the legal regulation established in which is challenged by the legal regulation laid down in a substatutory act, or irrespective of the fact that no law regulates such relationships at all), may provide the sufficient grounds for declaring such a substatutory legal act unconstitutional.

The most important social relationships must be regulated by means of laws

The Constitutional Court's ruling of 29 September 2015

The jurisprudence of the Constitutional Court follows the principled position that the most important social relationships must be regulated by means of laws. The Constitutional Court has also noted on more than one occasion that, under the Constitution, a legal regulation related to defining the content of human rights and freedoms or consolidating the guarantees of their implementation may be established only by means of a law (rulings of 26 October 1995, 19 December 1996, 13 December 2004, 5 May 2007, and 28 September 2011). Under no circumstances is it allowed to establish any conditions for the rise of the right of a person or to limit the scope of his/her right by means of substatutory legal acts (ruling of 5 May 2007).

1.8.4.6. Substatutory legal acts

Substatutory legal acts; a government resolution is a substatutory legal act

The Constitutional Court's ruling of 21 August 2002

In its rulings, the Constitutional Court has held on more than one occasion that the norms of a law are implemented by means of a substatutory legal act; however, such an act may not replace the law itself and create new general legal norms the legal force of which would compete with the norms of the law. Otherwise, the supremacy of laws over substatutory acts, which is established in the Constitution, would be violated.

A government resolution is a substatutory legal act. It may not contain any legal norms competing with those established in a law.

A government resolution must be in compliance with the norms of a law

The Constitutional Court's ruling of 29 October 2003

In its rulings, the Constitutional Court has held on more than one occasion that, in cases where a government resolution that contains norms conflicting with a law is adopted before the said law is passed, such a government resolution must be brought in line with the norms of the law adopted later, or it must be declared to be no longer valid.

The acts of the President of the Republic are substatutory legal acts

The Constitutional Court's ruling of 30 December 2003

Legal acts passed by the President of the Republic are substatutory legal acts; therefore, in the same way as all other substatutory legal acts, they may not be in conflict with the Constitution, constitutional laws, and laws.

The resolutions of the Seimas on the implementation of laws are substatutory legal acts

The Constitutional Court's ruling of 5 March 2004

The Seimas also has the powers to pass resolutions, specified in Item 2 of Article 94 of the Constitution, on the implementation of laws. In these resolutions, the assignments for other state institutions to take legal and/or organisational action to ensure the implementation of laws may be formulated. However, it needs to be stressed that the resolutions of the Seimas on the implementation of laws are substatutory legal acts; they may not provide for any legal regulation that would compete with that established in laws. Otherwise, they would not meet the constitutional concept that the resolutions of the Seimas on the implementation of laws are substatutory legal acts.

Substatutory legal acts

The Constitutional Court's ruling of 5 May 2007

The Constitutional Court has held in its acts (*inter alia*, the rulings of 30 December 2003, 5 March 2004, 13 December 2004, and 7 February 2005) more than once that the principle of a state under the rule of law consolidated in the Constitution also implies the hierarchy of legal acts, *inter alia*, the fact that substatutory legal acts may not be in conflict with laws, constitutional laws, and the Constitution, that substatutory legal acts must be adopted on the basis of laws, that a substatutory legal act is an act of the application of the norms of a law irrespective of whether that act has one-off (ad hoc) application or permanent validity.

At the same time, it needs to be noted that, in certain cases – directly provided for in the Constitution, if particular relationships are not regulated by means of laws (which detail and specify the constitutional legal regulation), the substatutory legal acts whereby particular institutions implement their respective powers, *expressis verbis* established and clearly defined in the Constitution, must be passed by directly invoking the Constitution.

Substatutory legal acts

The Constitutional Court's ruling of 9 October 2014

The Constitutional Court has held on more than one occasion that the constitutional principle of a state under the rule of law implies the hierarchy of all legal acts and does not permit that substatutory legal acts regulate the relationships that may be regulated only by means of a law, nor does it permit that substatutory legal acts establish any such a legal regulation that would compete with that established in a law or that such a legal regulation would not be based on laws (rulings of 14 March 2006, 22 June 2009, 6 November 2013, and 11 December 2013). Substatutory legal acts may not replace a law and may not create any such norms of a general character that would compete with the norms of a law, because the supremacy of laws over substatutory acts, which is consolidated in the Constitution, would thus be violated (rulings of 21 August 2002, 13 December 2004, and 28 September 2011). …

The Constitutional Court has also held in its acts that laws establish rules of a general character, while substatutory legal acts may particularise them and regulate the procedure for their implementation (rulings of 26 October 1995, 5 March 2004, and 9 May 2014).