10. LOCAL SELF-GOVERNMENT AND GOVERNANCE

10.1. STATE GOVERNANCE AND LOCAL SELF-GOVERNMENT AS TWO SYSTEMS OF PUBLIC POWER

The territorial administrative units of the State of Lithuania (Article 11 and Chapter X of the Constitution)

The Constitutional Court's ruling of 18 February 1998

Article 10 of the Constitution states 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.

However, for reasons of organising governance in a rational manner, the territories of all states, including those of unitary ones, have their own internal structure, i.e. they are divided into certain administrative units where the respective state institutions are formed. This is also provided for in Article 11 of the Constitution: "The territorial administrative units of the State of Lithuania and their boundaries shall be established by law." It is worth noting that these constitutional norms are specified and further developed by the norms of Chapter X entitled "Local Self-Government and Governance". First, the said chapter establishes not less than two levels of administrative units. Second, different systems of governance are established for administrative units of different levels: the Constitution guarantees the right of self-government for lower-level (i.e. first-level) units, while governance is organised by the Government at higher-level (i.e. second-level) administrative units.

The principle of balancing the interests of municipalities and those of the state

The Constitutional Court's ruling of 18 February 1998

… self-government implies certain freedom and autonomy of activities, as well as independence from state power institutions. Such freedom, however, is not limitless, while autonomy does not mean that it is allowed to ignore state interests. Therefore, the principle of balancing the interests of municipalities and those of the state is of utmost importance. In certain cases, this is expressed by the state in supporting municipalities in various ways and forms; in other cases, joint actions are coordinated when significant social objectives are sought; or, in still other cases, the state supervises municipal activities in the form prescribed by means of a law.

It should be noted that, in Lithuania, the self-government model is based on the centuries-old European tradition of the culture of self-government, which was later supplemented with the institution of administrative supervision that was formed on the basis of local (regional) state governance.

State governance and local self-government as two systems of public power; the principle of balancing the interests of municipalities and those of the state

The Constitutional Court's ruling of 24 December 2002

… the constitutional foundations of local self-government are established in Chapter X of the Constitution, which is entitled "Local Self-Government and Governance", as well as in other provisions of the Constitution.

When interpreting, in a systemic manner, the said provisions of the Constitution and the provisions thereof in which the constitutional grounds for the functioning of state power are established, it becomes clear that the Constitution distinguishes two systems of public power: state governance and local self-government.

Under Article 11 and Item 17 of Article 67 of the Constitution, the Seimas establishes, by means of a law, the territorial administrative units of the State of Lithuania and their boundaries. At higher-level administrative units, governance is organised by the Government according to the procedure established by law (Paragraph 1 of Article 123 of the Constitution); while the right to self-government is guaranteed to the administrative territorial units of the state, which are provided for by law (Paragraph 1 of Article 119 of the Constitution). …

[…]

Local self-government is the power of the territorial communities of administrative units provided for by law; such power of territorial communities is formed and functions on the constitutional grounds that are different from those of state power. The Constitution does not identify self-government with state governance (ruling of 14 January 2002). State governance and local self-government, as two systems of the implementation of public power, are related; however, each of the said systems implements the functions that are characteristic of it alone.

[…]

As such, the fact that the Constitution does not identify local self-government with state governance does not mean that there is no interaction between state governance and local self-government.

It has been mentioned that Paragraph 1 of Article 119 of the Constitution provides that the right to self-government is guaranteed to the administrative territorial units of the state, which are provided for by law. Paragraph 1 of Article 123 of the Constitution provides that, at higher-level administrative units, governance is organised by the Government according to the procedure established by law. The observance of the Constitution and laws and the execution of the decisions of the Government by municipalities are supervised by the representatives appointed by the Government (Paragraph 2 of Article 123 of the Constitution). Paragraph 4 of Article 123 of the Constitution provides that, in cases and according to the procedure provided for by law, the Seimas may temporarily introduce direct rule in the territory of a municipality.

It also needs to be noted that, under Paragraph 1 of Article 120 of the Constitution, the state supports municipalities.

Thus, centralised state governance in administrative territorial units is combined with decentralisation by consolidating, by means of laws, cooperation between central state institutions and municipalities (ruling of 22 October 1996). The principle of balancing the interests of municipalities and those of the state manifests itself not only in the fact that the state supports municipalities in various ways and forms or in the fact that the state supervises, in the forms prescribed by law, the activities of municipalities, but also in the coordination of joint actions where important social objectives are sought (ruling of 18 February 1998).

It needs to be noted that, when defining, by means of a law, the competence of municipalities and organising state governance in the territory of a municipality, regard must be paid to the constitutional principles of freedom and independence of the activities of municipalities within their competence defined by the Constitution and laws, as well as to the principles of balancing the interests of municipalities and those of the state. Therefore, it is not permitted to create opposition between, on the one hand, the principle of balancing the interests of municipalities and those of the state, which is consolidated in the Constitution, and, on the other hand, the constitutional principles of freedom and independence of the activities of municipalities within their competence defined by the Constitution and laws.

It has been mentioned that the Constitution does not identify local self-government with state governance. State governance is implemented through state power establishments and other state institutions indicated in the Constitution and laws. The right of self-government is implemented through self-government institutions – municipal councils; municipal councils form bodies that are accountable to them. The constitutional principles upon which the organisation of state power and the organisation of self-government are based overlap only in part.

State governance and local self-government as two systems of public power; interaction between state governance and local self-government

The Constitutional Court's ruling of 8 July 2005

The Constitutional Court, when interpreting Paragraph 2 of Article 120 of the Constitution in the context of other provisions of the Constitution (*inter alia*, those that consolidate the constitutional concept of local self-government), has held in its rulings that state governance and local self-government are two systems of public power, which are established in the Constitution. They are not identical. In the Constitution, local self-government is consolidated as a local system of public administration, which functions, within the competence defined in the Constitution and laws, on discretionary grounds and is not under direct jurisdiction of institutions of state power, i.e. local self-government is consolidated as the self-administration and discretion of the territorial communities of administrative units established in laws. Local self-government is the power of the territorial communities of administrative units, which is formed and functions on the constitutional grounds that are different from those of state power. Each aforementioned system of public power performs its own specific functions. On the other hand, a self-governing territorial community constitutes part of the entire national community – the civil Nation; therefore, it is not allowed to create opposition between the public interest of municipalities – territorial communities and the public interest of the entire national community, which must be guaranteed by state institutions within their competence. There is interaction between state governance and local self-government, which manifests itself, *inter alia*, in the following ways: centralised state governance in territorial administrative units is combined with decentralisation; laws consolidate cooperation between the institutions of central power and municipalities; the state supports municipalities in various ways and forms; and the state supervises (in forms defined by means of laws) the activity of municipalities and coordinates the joint actions of the state and municipalities when important social objectives are sought (rulings of 18 February1998, 13 June 2000, 28 June 2001, 14 January 2002, 24 December 2002, 30 May 2003, and 13 December 2004).

10.2. LOCAL SELF-GOVERNMENT

The constitutional foundations of local self-government

The Constitutional Court's ruling of 24 December 2002

The constitutional foundations of local self-government are established in Chapter X of the Constitution, which is entitled "Local Self-Government and Governance", as well as in other provisions of the Constitution.

When interpreting the concept of local self-government, which is established in the Constitution, it needs to be noted that, under Paragraph 1 of Article 119 of the Constitution, the right to self-government is guaranteed to the administrative territorial units of the state, which are provided for by law, and this right is implemented through the respective municipal councils; under Paragraph 2 (wording of 20 June 2002) of the same article, the members of municipal councils are elected for a four-year term, as provided for by law, from among the citizens of the Republic of Lithuania and other permanent residents of the respective administrative units by the citizens of the Republic of Lithuania and other permanent residents of these administrative units on the basis of universal, equal, and direct suffrage by secret ballot; under Paragraph 3 of the same article, the procedure for the organisation and activities of self-government institutions are established by law; under Paragraph 4 of the same article, for the direct implementation of the laws of the Republic of Lithuania, as well as the decisions of the Government and the municipal council, the municipal council forms executive bodies accountable to it.

Various aspects of the constitutional concept of self-government are established not only in Article 119 of the Constitution, but also in the provisions of other articles of the Constitution: the provision of Article 11, whereby the territorial administrative units of the State of Lithuania and their boundaries are established by law; the provision of Item 17 of Article 67, whereby the Seimas establishes the administrative division of the Republic; the provision of Paragraph 1 of Article 120, whereby the state supports municipalities; the provision of Paragraph 2 of the same article, whereby municipalities act freely and independently within

their competence defined by the Constitution and laws; the provision of Paragraph 1 of Article 121, whereby municipalities draft and approve their budgets; the provision of Paragraph 2 of the same article, whereby municipal councils have the right, within the limits and according to the procedure provided for by law, to establish local levies and may provide for tax and levy concessions at the expense of their own budgets; the provision of Article 122, whereby municipal councils have the right to apply to a court regarding the violation of their rights; the provision of Paragraph 2 of Article 123, whereby the observance of the Constitution and laws and the execution of the decisions of the Government by municipalities are supervised by the representatives appointed by the Government; the provision of Paragraph 3 of the same article, whereby the powers of the representatives of the Government and the procedure for the execution of their powers are established by law; the provision of Paragraph 4 of the same article, whereby, in cases and according to the procedure provided for by law, the Seimas may temporarily introduce direct rule in the territory of a municipality; the provision of Article 124, whereby the acts or actions of municipal councils or of their executive bodies or officials that violate the rights of citizens or organisations may be appealed against before a court; the provision of Paragraph 1 of Article 127, whereby the budgetary system of the Republic of Lithuania consists of the independent state budget of the Republic of Lithuania and independent municipal budgets; the provision of Article 141, whereby persons performing actual military service or alternative service, as well as the officers of the national defence system, the police, and the interior, non-commissioned officers, re-enlistees, and other paid officials of paramilitary and security services who are not retired to the reserve, may not be members of municipal councils, etc.

The concept of local self-government

The Constitutional Court's ruling of 24 December 2002

… Under the Constitution, local self-government is self-administration and discretion exercised, within their competence defined by the Constitution and laws, by the communities (i.e. territorial or local communities) of the state administrative units provided for by law, where such territorial communities are composed of permanent residents of the said units (citizens of the Republic of Lithuania and other permanent residents). The said territorial communities are the subject of the right to self-government and are referred to in the Constitution as municipalities (or local municipalities).

Thus, a municipality is the territorial community of an administrative unit of the state, which is provided for by means of a law; such a community has the right to self-government, which is guaranteed by the Constitution. In its ruling of 18 February 1998, the Constitutional Court held that the Constitution consolidates local self-government as a local system of public administration, which operates on discretionary grounds and is not directly subordinate to state power institutions. The system of municipalities is decentralised.

The freedom and independence of the activities of municipalities (Paragraph 2 of Article 120 of the Constitution)

The Constitutional Court's ruling of 24 December 2002

The provision of the Constitution that municipalities act freely and independently within their competence defined by the Constitution and laws should be regarded as a guarantee for the participation of these local communities in governing these territories (ruling of 28 June 2001).

[…]

The independence of municipalities and freedom of their activities within their competence defined by the Constitution and laws are constitutional principles. In its ruling of 13 June 2000, the Constitutional Court held that the norm of Paragraph 2 of Article 120 of the Constitution that municipalities act freely and independently may not be dissociated from the provision established in the same paragraph of the same article that the freedom and independence of municipalities are bound by the competence defined by the Constitution and laws.

Paragraph 2 of Article 120 of the Constitution provides that municipalities act freely and independently within their competence defined by the Constitution and laws. Under the Constitution, it is not permitted to establish any such a legal regulation whereby the possibility for municipalities to realise their competence directly established in the Constitution would be denied.

The constitutional provision that municipalities act freely and independently within their competence defined by the Constitution and laws also means that, if certain functions are assigned to municipalities by the Constitution or laws, municipalities perform such functions within the assigned limits. This means that a certain part of the competence of municipalities must be implemented directly and that the implementation of decisions adopted by municipal councils within the limits of their competence must not be bound by decisions (permissions, consents, etc.) of certain state institutions or officials. However, it needs to be emphasised that even the functions that exclusively belong to municipalities are regulated by means of a law. None of these functions mean that municipalities are absolutely independent in a certain area.

Funds allocated to municipalities for the fulfilment of the functions transferred to municipalities by the state

The Constitutional Court's ruling of 24 December 2002

In addition to the functions that belong exclusively to municipalities, they may be assigned to perform certain state functions; thus, more effective interaction between state power and citizens, as well as the democracy of governance, is ensured. In fulfilling these functions, the activities of municipalities are bound by the respective decisions of state power institutions and/or officials. Under the Constitution, such state functions must be transferred to municipalities by law.

In its ruling of 14 January 2002, while interpreting the provision of Paragraph 2 of Article 120 of the Constitution, whereby municipalities act freely and independently within their competence defined by the Constitution and laws, together with the provision of Paragraph 1 of Article 121 of the Constitution, under which municipalities draft and approve their budgets, and the provision of Paragraph 1 of Article 127 of the Constitution, whereby the budgetary system of the Republic of Lithuania consists of the independent state budget of the Republic of Lithuania and independent municipal budgets, the Constitutional Court held that the constitutional independence of the activities of municipalities within the limits of their competence defined in the Constitution and laws implies that, if state functions are transferred by law to municipalities, or if they are given duties by means of laws or other legal acts, funds must be provided for the implementation of these functions (duties); in addition, if, before the end of a budget year, additional state functions are transferred (duties are established) to municipalities, funds must also be allocated for this purpose. Under the Constitution, municipalities must execute laws, thus, including the laws by which municipalities are obligated to perform the state functions that are transferred to them. Municipalities would be unable to perform such duties unless their performance is guaranteed by financial means. Funds allocated to municipalities in order to fulfil the functions transferred to municipalities by the state must be provided for in the law on the state budget. The constitutional independence of the activities of municipalities within their competence defined by the Constitution and laws and the constitutionally prescribed support of the state for municipalities, as well as balancing the interests of municipalities and those of the state, imply that funds (municipal revenues and their sources) must be provided for in the state budget, necessary for ensuring the fully fledged functioning of self-government and for implementing the functions of municipalities.

The concept of a municipality

The Constitutional Court's ruling of 24 December 2002

It has been mentioned that the Constitution names the territorial communities of state administrative units (territorial communities) as municipalities (or local municipalities). On the other hand, the right of self-government is inseparable from the institutions through which the said right is implemented and/or from the organisation and the activities of the institutions that are accountable to them.

Therefore, it is not a **coincidence** that the Constitution employs the notion of a municipality not only in the sense of the territorial community of an administrative unit, but also in the sense of local self-government institutions and/or the institutions that are accountable to them (e.g. Paragraph 1 of Article 73, Paragraph 2 of Article 120, Paragraph 1 of Article 121, and Paragraph 2 of Article 123).

Municipal councils (Article 119 of the Constitution)

The Constitutional Court's ruling of 24 December 2002

Municipal councils as self-government institutions are directly provided for in the Constitution; the Constitution does not indicate any other self-government institutions. … the notion "self-government institutions" expresses the constitutional mission of the respective institutions of the territorial communities of administrative units: they are institutions through which the right of self-government of the respective communities is implemented.

The implementation of the right of self-government is impossible without democratic representation. As self-government institutions, municipal councils are representative institutions. When forming municipal councils, regard must be paid to the principles of the election of municipal council members, which are established in Paragraph 2 of Article 119 of the Constitution, as well as to other requirements of the Constitution.

The active and passive electoral rights of the permanent residents of an administrative unit in the elections of municipal councils (Paragraph 2 (wording of 20 June 2002) of Article 119 of the Constitution)

The Constitutional Court's ruling of 24 December 2002

Under Paragraph 2 of Article 119 of the Constitution, the members of municipal councils are elected by the citizens of the Republic of Lithuania and other permanent residents of these administrative units on the basis of universal, equal, and direct suffrage by secret ballot; the same paragraph also provides that the members of municipal councils are elected as provided for by law. Thus, the legislature has the constitutional competence to regulate, by means of a law, the procedure for the elections of municipal council members. The discretion of the legislature in regulating the procedure for the elections of municipal council members is limited by the Constitution.

Paragraph 2 of Article 119 of the Constitution links the active electoral right of persons in the election of the members of municipal councils with the legal fact – the permanent residence of persons in the respective administrative unit. This means that the legislature has the constitutional duty to establish, by means of a law, such a procedure for determining the fact of the permanent residence of a person in the respective administrative unit that would ensure that municipal council members are elected only by persons who could reasonably be deemed permanent residents of the respective administrative units. Otherwise, the constitutional concept of local self-government would be deviated from.

Under Paragraph 2 of Article 119 of the Constitution, citizens of the Republic of Lithuania and other permanent residents of administrative units may stand for election as members of the respective municipal council.

Paragraph 2 of Article 119 of the Constitution links the passive electoral right of persons in the election of the members of municipal councils with the legal fact – the permanent residence of persons in the respective administrative unit. This means that the legislature has the constitutional duty to establish, by means of a law, such a procedure for determining the fact of the permanent residence of a person in the respective administrative unit that would ensure that municipal council members are elected only from persons who could reasonably be deemed permanent residents of the respective administrative units. Otherwise, the constitutional concept of local self-government would be deviated from.

The incompatibility of the office of a member of a municipal council with another office and the principle of the prohibition of a dual mandate

The Constitutional Court's ruling of 24 December 2002

The limitations on the passive electoral right in the election of municipal council members are established in the Constitution.

Under Article 141 of the Constitution, persons performing actual military service or alternative service, as well as the officers of the national defence system, the police, and the interior, non-commissioned officers, re-enlistees, and other paid officials of paramilitary and security services who are not retired to the reserve, may not be members of municipal councils.

[…]

The same persons may not perform the functions in implementing state power and, at the same time, be members of municipal councils, through which the right of self-government is implemented. The Constitution consolidates the principle of the prohibition of a dual mandate. Besides, it needs to be noted that, in order that they might be able to perform the functions prescribed for them in the Constitution in the course of implementing state power, the Constitution provides for a special legal status for the President of the Republic, the members of the Seimas, the members of the Government and judges, which, *inter alia*, includes limitations on work, remuneration, and political activities, as well as a special procedure for removal from office or for the revocation of the mandate and/or immunities, i.e. the inviolability of the person and the special procedure for applying criminal and/or administrative responsibility. Members of municipal councils, under the Constitution, do not enjoy the aforesaid immunities; therefore, under the Constitution, there may not be any such a legal situation where persons who have the said immunities are members of municipal councils. Under the Constitution, members of municipal councils must be equal in their legal status.

Under the Constitution, state officials who, according to the Constitution and laws, have the powers to control or supervise the activities of municipal councils, may not be members of municipal councils, either.

The said requirements of the Constitution do not mean that the aforementioned persons do not have the right to seek to stand for election as members of municipal councils (i.e. this does not mean that they do not have the passive electoral right in the election of members of municipal councils), but that, when there occurs a legal situation where a person indicated in Article 141 of the Constitution or a person performing the functions of state power, or a state official who, under the Constitution and laws, has the powers to control or supervise the activities of municipalities is elected a member of a municipal council, he/she, before the newly elected municipal council convenes to the first sitting, must decide whether to remain in his/her previous office or to be a member of the municipal council.

The executive bodies accountable to municipal councils (Paragraph 4 of Article 119 of the Constitution)

The Constitutional Court's ruling of 24 December 2002

Under the Constitution, decisions adopted by municipal councils are inseparable from the execution of these decisions.

Under Paragraph 4 of Article 119 of the Constitution, for the direct implementation of laws, as well as the decisions of the Government and the municipal council, the municipal council forms executive bodies accountable to it. The formation of such executive bodies is a constitutional duty of municipal councils. Decisions of municipal councils are directly implemented by the executive bodies that are accountable to them and are an inseparable part of the self-government mechanism.

The Constitution does not establish any types of executive bodies (collegial, one-person bodies) that are accountable to municipal councils or the procedure for their formation, their names, and interrelations; the functions and competence of the said bodies are established only in general terms: under Paragraph 4 of Article 119, the executive bodies accountable to municipal councils are formed for the direct implementation of the laws, the decisions of the Government, and those of municipal councils. The functions and competence of the executive bodies accountable to municipal councils are left to be established by the Seimas by means

of a law. When regulating, by means of laws, the formation, functions, and competence of the executive bodies accountable to municipal councils, regard must be paid to the principles of local self-government, which are established in the Constitution: representative democracy, the accountability of executive bodies to the representation, the supremacy of municipal councils over the executive bodies that are accountable to them, etc.

The phrase "the municipal council shall form executive bodies", which is used in Paragraph 4 of Article 119 of the Constitution, also implies that the legislature has the discretion to establish by means of a law which procedure – an election procedure or a different procedure – must be applied in order to form the said executive bodies, which of the said bodies are collegial bodies and which are one-person bodies, as well as the type of their interrelations. The legislature also has the discretion to establish, by means of a law, the structure of collegial executive bodies and the number of their members, or to leave it, under the law, to be established by municipal councils.

The principle of the accountability of executive bodies to the representation also implies that the executive bodies accountable to municipal councils must be formed for the term of office of the municipal council.

It needs to be noted that the executive bodies indicated in Paragraph 4 of Article 119 of the Constitution are institutions that are established for the direct implementation of laws, the decisions of the Government, and those of the municipal council. The said executive bodies are not the internal structural units (subunits) of municipal councils that have to ensure the work of municipal councils.

It has been mentioned that the Constitution consolidates the principle of the supremacy of municipal councils over the executive bodies that are accountable to them. Municipal councils have the powers to control the executive bodies that are formed by municipal councils and are accountable to them.

Thus, under the Constitution, the executive bodies accountable to municipal councils may not be formed from among the members of the municipal councils that establish the said bodies.

It has also been mentioned that, under the Constitution, decisions adopted by municipal councils are inseparable from the execution of these decisions and the executive bodies that are accountable to municipal councils are an inseparable part of the self-government mechanism. It needs to be noted that it is clear from the provisions of Article 141 of the Constitution and other provisions of the Constitution that military, paramilitary, and security services are separated from civil service. Thus, the persons specified in Article 141 of the Constitution, i.e. persons performing actual military service or alternative service, as well as the officers of the national defence system, the police, and the interior, non-commissioned officers, re-enlistees, and other paid officials of paramilitary and security services who are not retired to the reserve, may be neither members of municipal councils nor officials or employees of the executive bodies that are established by municipal councils and are accountable to them.

Under the Constitution, persons who perform the functions of the implementation of state power, as well as state officials who, according to the Constitution and laws, have the powers to control or supervise the activities of municipal councils, may not be officials or employees of the aforesaid executive bodies, either.

It needs to be emphasised that executive bodies that are accountable to municipal councils may not be treated as ones through which the right of self-government is implemented by territorial communities, i.e. as self-government institutions, since, under Paragraph 1 of Article 119 of the Constitution, the right of self-government is implemented through municipal councils. It has been mentioned that municipal councils have the constitutional competence to control the said executive bodies. Therefore, the said executive bodies may not replace municipal councils, or bring municipal councils under their control, or dictate them. The powers of the executive bodies may not be dominant with respect to the powers of municipal councils. It is not permitted to establish any such a legal regulation whereby executive bodies accountable to municipal councils would be equated to the municipal councils that have formed them, let alone such a legal regulation whereby the powers of the executive bodies established by municipal councils and accountable to them

would restrict the powers of municipal councils, or whereby municipal councils would lose the possibility of exercising control over the executive bodies established by municipal councils and accountable to them.

The provision of Paragraph 4 of Article 119 of the Constitution, according to which, for the direct implementation of the laws of the Republic of Lithuania, as well as the decisions of the Government and the municipal council, the municipal council forms executive bodies accountable to it, also means that all decisions of the said executive bodies must be based on laws, as well as on decisions of the Government and/or those of the respective municipal councils. Under the Constitution, the executive bodies accountable to municipal councils do not have the right to adopt such decisions that are not based on laws, decisions of the Government, and/or the respective municipal councils; the said bodies also may not adopt such decisions the legal force of which would be equated to that of decisions passed by municipal councils.

It has been mentioned that the Constitution consolidates the principle of the supremacy of municipal councils over the executive bodies that are accountable to them. Consequently, under the Constitution, it is not permitted to establish any such a legal regulation whereby decisions on the issues categorised *expressis verbis* by the Constitution as belonging to municipalities would be adopted not by municipal councils, but by the executive bodies established by municipal councils and accountable to them.

[…]

It has been held in this ruling of the Constitutional Court that the functions and competence of the executive bodies accountable to municipal councils are left to be established by the Seimas by means of a law. However, as mentioned before, the principles of the accountability of executive bodies to the representation and of the supremacy of municipal councils over the executive bodies that are accountable to them, both of which are established in the Constitution, imply that municipal councils have the powers to control the executive bodies that are established by municipal councils and are accountable to them. Under the Constitution, the right of self-government is implemented through municipal councils; thus, all decisions adopted by the executive bodies accountable to municipal councils on the issues assigned to the competence of municipalities are subordinated to decisions of the respective municipal councils.

[…]

… When establishing, by means of a law, the competence of executive bodies accountable to municipal councils, it is necessary to observe the following provisions of the constitutional concept of local self-government: a municipal council is a municipal representative institution; a municipal council is superior over the executive bodies that are formed by it and are accountable to it; the executive bodies are formed for the realisation of the interests of municipalities, the direct implementation of laws, decisions of the Government, and those of municipal councils; municipal councils have the powers to control the executive bodies that are formed by municipal councils and are accountable to them.

The exclusive constitutional competence of municipal councils (Paragraph 1 of Article 40, Paragraph 2 of Article 41, Paragraph 4 of Article 119, Paragraphs 1 and 2 of Article 121, and Article 122 of the Constitution)

The Constitutional Court's ruling of 24 December 2002

… the competence of municipalities is *expressis verbis* defined in the following articles of the Constitution: Paragraph 1 of Article 40, which, *inter alia*, indicates municipal establishments of teaching and education; Paragraph 2 of Article 41, which, *inter alia*, indicates municipal schools of general education, vocational schools, and schools of further education … Paragraph 4 of Article 119, which provides that, for the direct implementation of the laws of the Republic of Lithuania, as well as the decisions of the Government and the municipal council, the municipal council forms executive bodies accountable to it; Paragraph 1 of Article 121, which provides that municipalities draft and approve their own budgets; Paragraph 2 of Article 121, which provides that municipal councils have the right, within the limits and according to the procedure provided for by means of a law, to establish local levies and that municipal councils may provide for tax and levy concessions at the expense of their own budgets; Article 122, which provides that municipal councils have the right to apply to a court regarding the violation of their rights.

The adoption of the decisions on the municipal issues indicated in Paragraph 1 of Article 40, Paragraph 2 of Article 41, Paragraph 2 of Article 47, Paragraph 4 of Article 119, Paragraphs 1 and 2 of Article 121, and Article 122 of the Constitution is the exclusive constitutional competence of municipal councils. Under the Constitution, it is not permitted to establish any such a legal regulation that would create the legal preconditions for the executive bodies accountable to municipal councils to interfere with the exclusive constitutional competence of municipal councils in the adoption of decisions on the issues specified in Paragraph 1 of Article 40, Paragraph 2 of Article 41, Paragraph 2 of Article 47, Paragraph 4 of Article 119, Paragraphs 1 and 2 of Article 121, and Article 122 of the Constitution.

The incompatibility of the office of a member of a municipal council with the office of a state official who has the powers to control and supervise the activities of municipalities

The Constitutional Court's decision of 11 February 2004

… the statement "state officials who … have the powers to control or supervise the activities of municipalities may not be members of municipal councils" … of the Constitutional Court's ruling of 24 December 2002 means, *inter alia*, that state officials (servants and other persons irrespective of how they are referred to in laws) who, under the Constitution and laws, have the powers to adopt decisions upon which the adoption and implementation of the decisions of municipal councils within their competence defined by the Constitution and laws depend may not be municipal council members at the same time; this statement does not mean that state officials who have the powers to conduct only organisational, technical, etc. control or supervision over the executive bodies accountable to municipal councils, as well as over municipal establishments or enterprises, may not be municipal council members at the same time.

Establishing municipal functions and the competence of municipal institutions

The Constitutional Court's decision of 11 February 2004

Under the Constitution, municipal functions and competence may be established only by means of a law.

It needs to be noted that certain competence of municipal councils is *expressis verbis* established in the Constitution itself. Decisions on these issues may be adopted only by municipal councils. This is the exclusive constitutional competence of municipal councils because: (1) the legislature may not stipulate that decisions on these issues are adopted not by municipal councils, but by the executive bodies accountable to them or by other municipal institutions; (2) municipal councils themselves may transfer the right to adopt such decisions neither to the executive bodies accountable to municipal councils nor to any other municipal institutions, while the legislature may not establish any such a legal regulation under which municipal councils would be permitted to transfer the right to adopt such decisions to the executive bodies accountable to municipal councils or other municipal institutions.

It was held in the Constitutional Court's ruling of 24 December 2002 that the functions and competence of the executive bodies accountable to municipal councils are left to be established by the Seimas by means of a law. Thus, as regards the issues whereby the competence of municipal councils is not *expressis verbis* established in the Constitution (where such issues do not fall under the exceptional constitutional competence of municipal councils), the legislature, under the Constitution, has the powers to stipulate which decisions fall under the competence of municipal councils and which decisions are within the competence of the executive bodies accountable to municipal councils or other municipal institutions. In cases where laws provide that certain decisions are adopted by municipal councils, municipal councils may transfer the right to adopt such decisions neither to the executive bodies accountable to municipal councils nor to other municipal institutions. However, the legislature, under the Constitution, may also establish, by means of a law, such a legal regulation under which certain decisions are adopted by municipal councils, but municipal councils may transfer the right to adopt such decisions to the executive bodies accountable to them; however, in such cases, the following conditions must be met: (1) the powers of municipal councils to transfer the right to adopt certain decisions to the executive bodies accountable to municipal councils must be established

expressis verbis in a law; (2) the said powers may not be transferred to such municipal institutions that, according to the law, are not executive bodies accountable to municipal councils. Still, in other cases, the legislature may, by means of a law, directly stipulate which decisions are adopted by executive bodies accountable to municipal councils.

[…]

… under the Constitution, a legal regulation established by means of a law where such a legal regulation provides that, in certain cases, municipal councils may transfer the right to adopt certain decisions to the executive bodies accountable to municipal councils may not be such that would create the preconditions for a legal situation in which the executive bodies accountable to municipal councils would replace municipal councils, or would subordinate such councils to them, or would make such bodies equal to municipal councils, or would impose the will of such bodies on municipal councils, or would make the powers of the executive bodies dominant over those of municipal councils; the said legal regulation may not be such whereby the powers of municipal councils would be restricted by those of the executive bodies established by them and accountable to them or whereby municipal councils would lose the possibility of controlling these executive bodies. If such a legal regulation were adopted, it would also violate the principle of the supremacy of municipal councils over the executive bodies that are accountable to them, which is consolidated in the Constitution and stated in the Constitutional Court's ruling of 24 December 2002; such a legal regulation would also distort both the constitutional concept of local self-government and the essence of the self-government rights of territorial communities, which implement the said rights through municipal councils.

The incompatibility of the office of a member of a municipal council with the office of the heads or officials of the establishments or enterprises that are accountable to the municipal council

The Constitutional Court's decision of 13 February 2004

Municipalities act freely and independently within their competence defined by the Constitution and laws (Paragraph 2 of Article 120 of the Constitution).

When implementing the right of self-government guaranteed by the Constitution, municipal councils, under the laws, may found municipal institutions, establishments, and enterprises.

In its decision of 11 February 2004, the Constitutional Court held that the legislature has the discretion to stipulate, by means of a law, who (whether municipal councils or executive bodies accountable to them) has the right to adopt decisions concerning the appointment of the heads of municipal establishments and enterprises, and concerning the supervision of these establishments and enterprises: the legislature has the right to stipulate that these decisions are adopted by municipal councils, or that they are adopted by executive bodies accountable to municipal councils, or that these decisions are adopted by municipal councils, or that municipal councils may transfer the right to adopt such decisions to the executive bodies accountable to municipal councils; in such a case, the powers of municipal councils to transfer the said rights to the executive bodies accountable to municipal councils must be directly indicated in a law. After a law establishes the powers of municipal councils to adopt decisions concerning the transfer of supervision over municipal establishments and enterprises to the executive bodies accountable to municipal councils, the right of municipal councils to supervise these establishments and enterprises may not be denied.

If laws provide that heads or officials of municipal establishments and enterprises are accountable to municipal councils for the activities of their or other establishments and enterprises, such heads or officials may not be members of the said municipal councils at the same time. Otherwise, the right of municipal councils (as the representation of territorial communities) to supervise the activity of the establishments and enterprises (their heads and officials) that are accountable to them would be distorted, since this would give rise to a legal situation where the heads or officials of the establishments and enterprises accountable to municipal councils would supervise themselves (their own activity) and would be accountable to themselves.

The freedom and independence of the activities of municipalities (Paragraph 2 of Article 120 of the Constitution); functions performed by municipalities

The Constitutional Court's ruling of 8 July 2005

… the content of the … provision of Paragraph 2 of Article 120 of the Constitution, under which municipalities act freely and independently within their competence defined by the Constitution and laws, may not be interpreted separately from other provisions of the Constitution that consolidate the constitutional concept of local self-government, *inter alia*, the constitutional foundations of the functioning of local self-government as a system of public power and the constitutional foundations of relationships between local self-government and state governance. The majority of these provisions are set out in Chapter X "Local Self-government and Governance" of the Constitution (Articles 119–124).

In its ruling of 24 December 2002, the Constitutional Court held that, under the Constitution, certain functions are vested exceptionally in municipalities (respective competence of municipalities is directly provided for in the Constitution); moreover, municipalities may also be assigned by means of laws with the performance of certain state functions. In this regard, the concept "functions of municipalities" is a generalising one; it comprises all functions performed by municipalities according to the Constitution and laws, including those that are performed by municipalities due to the fact that, under the Constitution, these functions are assigned exceptionally to them, and those the performance of which, under the Constitution, must be guaranteed by the state, but which are performed, under laws, by municipalities or with certain participation of municipalities for which (to their institutions or officials) the respective competence (powers) is (are) established. Thus, when deciding in constitutional justice cases whether such a legal regulation that is established by means of laws and under which the performance of certain functions is transferred to municipalities is in conflict with Paragraph 2 of Article 120 of the Constitution, and whether such a legal regulation that is established by means of laws and/or substatutory legal acts of the Government and under which municipalities (their institutions or officials) are vested with certain competence (powers) required in order to perform certain functions transferred to municipalities under laws is in conflict with Paragraph 2 of Article 120 of the Constitution, account must be taken of those norms and principles of the Constitution that establish the constitutional foundations of the legal regulation of the respective social relationships; in addition, consideration should be given to the interrelations between these norms and principles, on the one hand, and the provisions of the Constitution that consolidate the constitutional concept of local self-government, on the other hand. …

[…]

In its rulings, the Constitutional Court has held … more than once that the provision of Paragraph 2 of Article 120 of the Constitution, whereby municipalities act freely and independently within their competence defined by the Constitution and laws, is the guarantee of the participation of local communities in governing the respective territories.

It was mentioned that, under to the Constitution, certain functions are vested exceptionally in municipalities; moreover, it is also allowed to transfer, by law, certain state functions to municipalities. It should be noted that the possibility, which stems from the Constitution, to transfer by law certain state functions to municipalities also means that the aforementioned functions may be assigned by means of a law to municipalities to a full extent or only to a certain extent. In that case, it is especially necessary to stress the requirement, which stems from the Constitution, for the clarity of a legal regulation: a legal regulation that is established by means of a law must be such where it would be clear to what extent municipalities perform a particular function and to what extent the performance of this function is left to the state.

… the performance of certain state functions, speaking objectively, must, at least to a certain extent, be transferred to municipalities, as, without doing so, it would be impossible to guarantee the effective performance of such functions.

It should be stressed that, under the Constitution, the functions of municipalities may be established only by means of a law; this may not be done by means of a substatutory legal act.

In the area regarding the legal regulation of local self-government relationships, the legislature has broad discretion. This discretion comprises not only the right of the legislature to stipulate by means of a law which functions (to a full extent or to a certain extent) are transferred to municipalities, but also to differentiate these functions, *inter alia*, according to freedom of decision making and, on this basis, to set the types of the functions that are transferred to municipalities. The level of the independence of municipalities when performing various functions that are established by means of laws may differ: when performing some functions, municipalities may have more independence; whereas, when performing certain other functions, freedom of the activities of municipalities is restricted by the respective decisions of state institutions and/or officials (ruling of 24 December 2002).

It should also be stressed that, when establishing the functions of municipalities and their types, the legislature must pay regard to the independence of municipalities and freedom of their activity within their competence defined by the Constitution and laws, to the principles of balancing the interests of municipalities and those of the state, as well as to the constitutional concept of local self-government.

In this context, mention should be made of the fact that, as held by the Constitutional Court in its rulings of 24 December 2002 and 13 December 2004, the constitutional provision that municipalities act freely and independently within their competence defined by the Constitution and laws also means that, provided that certain functions are assigned to municipalities by the Constitution or laws, then, to the extent that such functions are assigned to them, municipalities perform them (both the ones that are performed by them due to the fact that these functions, under the Constitution, are assigned exceptionally to municipalities and the ones the performance of which, according to the Constitution, must be guaranteed by the state; however, in order to guarantee, *inter alia*, more effective interaction between state power and citizens, as well as the democracy of governance, all of such functions or some of them to a certain extent are transferred by law to municipalities). However, none of these functions mean absolute independence of municipalities in a particular area; all such functions are regulated by means of a law.

The Constitutional Court has held that self-government institutions may be assigned only such functions that the said institutions would be able to perform (ruling of 14 January 2002) and that, if certain state functions are delegated to municipalities by means of laws or if laws and other legal acts create certain duties for municipalities, it is also necessary to allocate funds required for performing these functions (duties) (ruling of 24 December 2002). It was held in the Constitutional Court's rulings of 14 January 2002, 24 December 2002, and 13 December 2003 that, according to the Constitution, municipalities must execute laws, including the laws by which municipalities are obliged to perform state functions that are assigned to them, and that funds required in order to ensure the fully fledged functioning of self-government and the performance of municipal functions must be provided for in the state budget. It should be held that the Constitution (*inter alia*, the provision of Paragraph 1 of Article 120 of the Constitution, according to which the state supports municipalities) gives rise to the duty of the legislature to establish, by means of laws, such a legal regulation where funding to municipal functions would be ensured by taking account of the resources and material and financial capacity of the state and society, as well as other important factors. On the other hand, the constitutional duty of the legislature to establish such a legal regulation where funding for municipal functions would be ensured by taking account of the resources, material and financial capacity of the state and society, as well as other important factors, does not deny the duty of municipalities (their institutions or officials), within the competence defined by the Constitution or laws, to adopt the respective decisions so that the funds needed for performing their functions would be collected and these funds would be used in a proper manner; the aforesaid constitutional duty of the legislature does not deny the responsibility of municipalities (their institutions or officials) to properly carry out the functions transferred to them. In this context, it should be mentioned that, according to the Constitution, municipalities draft and approve their budgets (Paragraph 1 of Article 121 of the Constitution), municipal budgets are independent (Paragraph 1 of Article 127), municipal councils have the right, within the limits and according to the procedure provided for by means of a law, to establish local levies, and municipal councils may provide for tax and levy concessions at the expense of their own budgets (Paragraph 2 of Article 121 of the Constitution).

It should be noted that, according to the Constitution, there may be no such legal regulation where, having established certain functions of municipalities by means of a law, municipal institutions, and/or officials through which these functions should be performed would have no respective competence (powers). Otherwise, it would have to be stated that the functions that were transferred to municipalities by means of a law are the ones that municipalities are not able to perform.

The public interest that must also be guaranteed by local self-government as one of the systems of public power provided for in the Constitution, as well as particular tasks that are faced within a particular period by all society, the state, and territorial communities, is dynamic and subject to change. Therefore, the legislature may and, in certain cases, even must, by means of a law, change (expand, narrow, or modify otherwise) the scope and content of functions that are transferred to municipalities; it must transfer new functions that were not performed previously to municipalities and/or must stipulate that municipalities cease to perform certain functions that were performed before; the legislature may and, in certain cases, even must also correspondingly modify the competence (powers) of municipalities (their institutions or officials) needed in order to perform the functions transferred to municipalities. In doing so, the legislature must pay regard to the norms and principles of the Constitution, *inter alia*, the imperative, which stems from the Constitution, to establish, by means of a law, such a legal regulation where funding for municipal functions would be ensured by taking account of the resources and material and financial capacity of the state and society, as well as other important factors; moreover, if the scope of functions transferred to municipalities is changed (expanded, narrowed, or modified otherwise), the legislature may and, in certain cases, even must correspondingly modify (increase or reduce) the funding for municipal functions. It should be noted in this context that, as already held in the Constitutional Court's rulings of 14 January 2002, 24 December 2002, and 13 December 2004, if additional state functions are transferred (other duties are assigned) to municipalities prior to the end of the budgetary year, funds must also be allocated for the performance of the said functions (duties).

It should especially be stressed that, under the Constitution, it is allowed only by means of a law to change (expand, narrow, or modify otherwise) the scope and content of functions that are transferred to municipalities, to transfer new functions that were not performed previously to municipalities, and/or to stipulate that municipalities cease to perform certain functions that were performed before; this may not be done by means of a substatutory legal act.

Municipal institutions

The Constitutional Court's ruling of 8 July 2005

Municipalities perform all their functions (both the ones that are performed by them due to the fact that these functions, under the Constitution, are assigned exceptionally to municipalities and the ones the performance of which, according to the Constitution, must be guaranteed by the state; however, in order to guarantee, *inter alia*, more effective interaction between state power and citizens, as well as the democracy of governance, all of such functions or some of them to a certain extent are transferred by law to municipalities) and implement their competence (powers) through self-government institutions – municipal councils – the members of which have the mandate of territorial community, through executive bodies that are founded by and accountable to municipal councils, and through other institutions accountable to municipal councils (municipal establishments or enterprises). In its rulings of 24 December 2002, 17 March 2003, and 13 December 2004, the Constitutional Court held that municipal institutions are established in order to realise municipal interests and to directly implement laws, resolutions of the Government, and decisions of the municipal council; thus, under the Constitution, municipal councils, executive bodies that are accountable to them, and other institutions established by municipal councils should also be considered municipal institutions. The concept "municipal institutions" expresses the subordination of the respective institutions to a certain municipality.

In this context, it should be mentioned that the Constitution directly consolidates the grounds and procedure for forming (electing) self-government institutions – municipal councils (Paragraph 2 of

Article 119 of the Constitution); moreover, the Constitution *expressis verbis* requires that municipal councils form executive bodies accountable to them (Paragraph 4 of Article 119 of the Constitution). In its ruling of 13 December 2004, the Constitutional Court held that, in cases under the Constitution and laws, municipal councils (representative institutions) and executive bodies accountable to them (executive institutions) are granted authoritative powers and that such municipal institutions are institutions of municipal authority and public administration.

It should be stressed that, under the Constitution, municipal councils, i.e. institutions through which the right of self-government of territorial communities is implemented, have the right to found various institutions accountable to them – municipal establishments, enterprises – that are needed in order to perform functions transferred to municipalities, whereas in cases provided for by means of a law they must found such institutions (municipal establishments or enterprises). Paragraph 2 of Article 120 of the Constitution, wherein it is established that municipalities act freely and independently within their competence defined by the Constitution and laws, and Paragraph 3 of Article 119 of the Constitution, wherein it is established, *inter alia*, that the procedure for the organisation and activities of self-government institutions is established by law, also imply that the legislature has the duty to lay down, by means of a law, the procedure for founding municipal establishments or enterprises, whereas municipal councils must found municipal establishments or enterprises according to the requirements set in laws.

… the legislature, while paying regard to the Constitution, may establish, by means of a law, certain conditions and/or procedures that must be followed by municipalities when implementing their rights of the founder of the establishments or enterprises founded by them; it is also allowed to establish, by means of a law, other limitations that, to a certain extent, restrict the rights of municipalities as founders of certain establishments or enterprises.

Transferring the function of supporting and protecting culture to municipalities

The Constitutional Court's ruling of 8 July 2005

It has been mentioned that certain state functions may also be transferred by law to municipalities, and that the legislature has wide discretion to stipulate, by means of a law, which functions (all or some of them to a certain extent) are assigned to municipalities. It has also been mentioned that the performance of certain state functions, speaking objectively, must, at least to a certain extent, be transferred to municipalities as, without doing so, it would be impossible to guarantee the effective performance of such functions.

… the support and protection of culture is precisely such a state function. The fact that the aforementioned state function must be transferred, at least to a certain extent, to municipalities is caused by the nature of both this function and local self-government as the self-administration and discretion, within the competence defined in the Constitution and laws, of the territorial communities of administrative units provided for in laws. The spread of culture is, first of all, its spread in the closest environment, in territorial surroundings among those who live in a particular area on whose territory certain cultural objects are located; access to culturally valuable objects implies, first of all, their accessibility to the members and residents of the respective community on whose territory particular cultural objects are located; cultural establishments (museums, theatres, libraries, concert organisations, etc.) function in certain administrative territorial units, localities; cultural monuments and other objects of culture are also located on certain territories; the local authorities (their institutions or officials) that administer such territories may not avoid the respective obligations related to the maintenance of these monuments, the ensuring of their accessibility, etc.; creators are also members of territorial communities; associations of creators function in particular administrative territorial units, thus, state support to creators and their associations may be rational and efficient only if account is taken of the local conditions in which creators act and their associations function, etc. Moreover, the state support and development of culture as a constitutionally protected and defended value would be impossible if culture were not developed in regions, separate parts of the territory of the state, separate self-governing territorial communities, which form part of the entire national community – the civil Nation.

The extent to which the performance of the function of supporting and protecting culture should be transferred to municipalities is subject to the state cultural policy. The legislature has wide discretion in this sphere. However, it must pay regard to the independence of municipalities and freedom of their activity within their competence defined by the Constitution and laws, the principles of balancing the interests of municipalities and those of the state, as well as the constitutional concept of local self-government.

At the same time, it should be noted that the fact that the support and protection of culture as a state function must, to a certain extent, be transferred to municipalities does not mean that the state (its institutions) may opt out from the performance of this function. … an interaction exists between state governance and local self-government, which manifests itself, *inter alia*, in the following ways: centralised state governance in territorial administrative units is combined with decentralisation; laws consolidate cooperation between institutions of central power and municipalities; the state supports municipalities in various ways and forms; and the state supervises (in forms defined by means of laws) the activities of municipalities and coordinates the joint actions of the state and municipalities where important social objectives are sought. Thus, under the Constitution, no matter to what extent the performance of the aforementioned function is transferred to municipalities, the state still has the duty to ensure that this function is performed properly.

… under the Constitution, the functions of municipalities may be established only by means of a law; this may not be done by means of a substatutory legal act. In this context, it should also be mentioned that the support and protection of culture is not consolidated *expressis verbis* in the Constitution as a function that is assigned exceptionally to municipalities (respective competence of municipalities is not directly consolidated in the Constitution). Thus, the duty of municipalities to perform (to a certain extent) the function of supporting and protecting culture may be established only by means of a law; it is also allowed to establish the respective competence of municipalities only by means of a law. Such laws are subject to the legal clarity requirements, which stem from the Constitution: the legal regulation established therein must be such where it would be clear to what extent municipalities perform this function and to what extent the performance of this function is left to the state.

Due to the fact that, under the Constitution, it is not allowed to assign to self-government institutions any such functions that they would not be able to perform, the legislature is under the duty to establish, by means of a law, such a legal regulation that, taking into account the resources, material and financial capacity of the state and society, as well as other important factors, would ensure (to a certain extent) the financing (*inter alia*, from the state budget) of the function of supporting and protecting culture when the said function is transferred to municipalities. Municipalities (their institutions or officials), whose councils have the powers, under the Constitution, to draw up and approve independent budgets, also have the duty to adopt decisions within their competence defined by the Constitution and laws so that funds necessary for performing their functions are raised and used in a proper manner; they are responsible for a proper performance of functions transferred to them. However, it should be held that the constitutional consolidation of culture as a national value of universal importance does not permit placing on municipalities alone the burden of providing funds to the institutions that contribute to the development of culture.

[…]

In order to perform (to the established extent) the function of supporting and protecting culture, which is transferred to them, and to implement their competence in this area, municipalities may and, in certain cases, must have particular institutions that contribute to the development of culture (*inter alia*, institutions or enterprises that provide public cultural services), which are founded, reorganised, restructured in any other way, or liquidated by municipalities (their institutions) in line with requirements established in laws.

When paying regard to the Constitution, the legislature may establish, by means of a law, certain conditions and/or procedure that must be followed by municipalities in implementing their rights of the founder of institutions or enterprises (*inter alia*, the establishments or enterprises that provide public cultural services) that are founded by them and contribute to the development of culture; in addition, the legislature may establish, by means of a law, other limitations that restrict to a certain extent the rights of municipalities as the founders of particular establishments or enterprises and ensure that municipalities would properly

perform the function of supporting and protecting culture, which is transferred to them (to the established extent).

[…]

The state cultural policy must be dynamic … its formation and implementation are modified by taking various factors into account. Therefore, the content of the function of supporting and protecting culture, which is transferred to municipalities by means of a law, may be changed by means of a law, and the extent of the performance of this function, which is assigned to municipalities, may be extended or reduced by means of a law. In the context of the case at issue, it should be held that, in order to ensure the interests of municipalities more efficiently, to better take into consideration the local conditions of the localities in which creators and their associations act, to bring the spread of culture closer to territorial communities, to decentralise the administration of culture, as well as on the basis of other reasons (first of all, expediency), it is allowed to assign municipalities by means of a law with the performance of the function of supporting and protecting culture to a greater extent – the performance of this function (to a certain extent) may be transferred from the national level to the municipal level. At the same time, the reverse process when the performance of the aforementioned functions (to a certain extent) is transferred from the municipal level to the national level is, in general, also possible.

When transferring the performance (to a certain extent) of the function of supporting and protecting culture from the national level to the municipal level, regard must be paid to the constitutional concept of local self-government, the independence of municipalities and freedom of their activity, as entrenched in the Constitution, within their competence defined by the Constitution and laws, the principles of balancing the interests of municipalities and those of the state, and the interests of municipalities; it is not allowed to establish for municipalities any such obligations that they would be unable to fulfil; if necessary, the funding for the functions of certain municipalities must be modified (increased or reduced).

The aforementioned transfer of the performance of the functions (to a certain extent) of the support and protection of culture from the national level to the municipal level may be related to the change in the subordination of certain state institutions (establishments or enterprises) the purpose of which is to take care of the development of culture (*inter alia*, the establishments or enterprises that provide public cultural services), where the administration of such establishments is transferred from the system of state administration to local self-government. When paying regard to the Constitution, the legislature may, by means of a law, establish certain conditions and/or procedure that must be followed by municipalities in implementing their rights of the founder of institutions or enterprises (*inter alia*, the establishments or enterprises that provide public cultural services) that are transferred to them and contribute to the development of culture; in addition, the legislature may, by means of a law, establish other limitations that would restrict to a certain extent the rights of municipalities as the founders of particular establishments or enterprises and that would ensure that municipalities would properly perform the function of supporting and protecting culture, which is transferred to them (to the established extent).

It has been held that the assignment of any state establishment or enterprise to municipality (*inter alia*, the transfer of rights of the founder of this establishment or enterprise) must be based on a law and that this requirement stems from the Constitution. Thus, the change in the subordination of state institutions (establishments or enterprises) the purpose of which is to take care of the development of culture (*inter alia*, the establishments or enterprises that provide public cultural services) must be based on a law; this requirement also stems from the Constitution. The constitutional requirements for legal clarity and legal certainty are applicable to the legal regulation according to which a certain state institution has the powers to issue legal acts on the basis of which the respective state institution (establishment or enterprise) the purpose of which is to take care of the development of culture (*inter alia*, an establishment or enterprise that provides public cultural services) is assigned to a municipality (*inter alia*, the rights of the founder of this establishment or enterprise are transferred): such a legal regulation must make it clear whether the rights of the respective municipality as the holder (sole holder or holder in partnership with other subjects, *inter alia*, state institutions) of the rights of the founder of the respective establishment or enterprise are restricted to

any extent or whether no such restrictions have been established; moreover, the said legal regulation must make it clear whether particular establishments or enterprises are financed or supported in any other way by the municipality or by the state (its institutions), whether the burden of financing is divided in any way between the municipality and the state (its institutions), whether the powers of control or supervision over these establishments or enterprises are vested in the municipality (its institutions or officials) or in the state (its institutions or officials), or both in the municipality (its institutions or officials) and in the state (its institutions or officials), etc. Municipalities must be informed about the upcoming transfer of the aforementioned institutions to them.

… when the respective state institution transfers the cultural establishment or enterprise to the municipal level (*inter alia*, when the rights of the founder are transferred to a municipality), the state may and, in certain cases, must establish, by means of a law, various restrictions applicable to the municipality and such restrictions must be followed by the municipality when exercising the rights of the founder, *inter alia*, when adopting decisions on the reorganisation, liquidation, or any other restructuring of the establishments or enterprises that are transferred to municipalities. In certain cases, if the state establishes no such restrictions applicable to municipalities, the performance of the function of supporting and protecting culture where the said function is transferred to the municipal level would become more difficult or municipalities could even refuse, to a certain extent, the performance of the function of supporting and protecting culture where such their function is set by means of a law. This restriction of the independence of municipalities stems from the Constitution and, as such, should not be considered the disregard of the interests of municipalities; the said restriction, stemming from the Constitution, ensures balancing the interests of municipalities and those of the state.

The discretion of the legislature to choose a system of elections to municipal councils (Article 34 and Paragraphs 2 and 3 of Article 119 of the Constitution)

The Constitutional Court's ruling of 9 February 2007

Paragraph 1 of Article 34 of the Constitution provides that citizens who, on the day of the election, have reached 18 years of age have the electoral right; Paragraph 2 of the same article states that the right to stand for election is established by the Constitution of the Republic of Lithuania and by the election laws. It should be noted that the legislature has very broad discretion when implementing the powers, which arise from Article 34, Paragraphs 2 and 3 of Article 119, and other provisions of the Constitution, to establish a system of elections to municipal councils.

The Constitution does not establish any requirements for the legislature as regards choosing a system of elections to municipal councils. It does not prohibit any changes to the chosen system of elections to municipal councils, either. … state governance and local self-government, as two systems of public power, are formed and function on different constitutional grounds. Thus, the legislature may establish different systems of elections to the Seimas and to municipal councils. According to the Constitution, the system of elections to municipal councils should not necessarily be designed by following the model of the system of elections to the Seimas.

For example, a law may establish exclusively proportional, or exclusively majoritarian system of elections to municipal councils, or a system which combines both the proportional and majoritarian systems; as such, a proportional electoral system, or a majoritarian electoral system, or a different electoral system, *inter alia*, a mixed electoral system, which combines both the proportional and majoritarian electoral systems, may not be regarded as violating the constitutional principle of direct elections, which demands that members of municipal councils be elected by voters instead of any "intermediary" institutions (electoral colleges, etc.) formed on the basis of the votes cast by voters. In addition, as such, a proportional electoral system, or a majoritarian electoral system, or a different electoral system, *inter alia*, a mixed electoral system, which combines both the proportional and majoritarian electoral systems, may not be regarded as creating the preconditions for violating the requirements of free and democratic elections, universal and equal suffrage, secret ballot, or other standards of elections in a democratic state under the rule of law.

[…]

Whichever electoral system is chosen by the legislature, it must establish such a legal regulation that would ensure at the municipal institutions the democratic representation of permanent residents of the administrative units of the territory of the Republic of Lithuania, the proper implementation of the right of self-government, and the functioning of municipal institutions, and would not create any preconditions for the unpredictability, instability, or non-efficiency of the activity of municipal councils. Otherwise, the expectations of the voters would be denied and a threat would arise that the constitutional principle of responsible governance will be violated.

The passive electoral right in the elections of municipal councils (requirement that, after the legislature chooses exclusively the proportional system of elections to municipal councils, permanent residents of administrative units must have the possibility of standing for election to municipal councils even where they are included in the lists of candidates that are drawn up by entities other than political parties)

The Constitutional Court's ruling of 9 February 2007

The constitutional concept of local self-government implies the broadest possibilities possible for all members of the respective territorial community to participate in the decision-making process related to the administration of affairs of the particular location (territorial community); thus, the said concept implies the broadest possibilities possible to compete for a mandate in the council of the respective municipality.

Elections, including elections to municipal councils, are a political process. The electoral rights (both active and passive ones) are closely related to the right of citizens of the Republic of Lithuania to participate in the governance of their state, as consolidated in Article 33 of the Constitution, as well as to the right of citizens to freely form political parties, as consolidated in Article 35 of the Constitution, provided that the aims and activities thereof are not contrary to the Constitution and laws. It should be noted that the aims of establishing political parties and their activity are inseparable from seeking public power, thus, as well as from participating in elections to the representative institutions of public power, *inter alia*, municipal councils. Under the Constitution, whichever system of elections to municipal councils (exclusively proportional, or exclusively majoritarian, or such a system which combines certain elements of proportional and majoritarian systems) is chosen by the legislature, it is not allowed to establish any such a legal regulation that would prevent political parties or candidates nominated or supported by them from participating in elections to municipal councils (elections of their members). It has been held in this ruling of the Constitutional Court that, in itself, the proportional system of elections does not create any preconditions for violating the constitutional principle of direct elections, the requirements for free and democratic elections, universal and equal suffrage, secret ballot, or other standards of a democratic state under the rule of law.

Consequently, under the Constitution, such (proportional) system of elections to municipal councils where candidates included in the lists of political parties compete for mandates of members of municipal councils is permissible.

On the other hand, that fact that, under the Constitution, such (proportional) system of elections to municipal councils where candidates included in the lists of political parties compete for mandates of members of municipal councils is permissible does not mean that it is constitutionally justifiable to limit the lists of candidates only to the lists formed by political parties after exclusively proportional system of elections to municipal councils (i.e. a system where individuals not included in the list of candidates may not be nominated as candidates in the elections to municipal councils) is chosen.

[…]

… it needs to be stressed that the … constitutional guarantee that protects a person from belonging to any political party against his/her will also means that a person may not be directly or indirectly compelled to become related to any political party by any relationships that are other than formal membership.

Thus, the legislature, when regulating, by means of a law, the relationships of elections to municipal councils, is bound by the requirement, which stems from the Constitution, not to establish any such a legal

regulation where a person who wishes to use his/her passive electoral right in an election of members of municipal councils would be compelled to seek membership in a political party or to become bound with a certain political party by relationships that are other than those of formal membership.

This implies the necessity to ensure that, if exclusively the proportional system of elections to municipal councils (i.e. a system where individual persons who are not included in the lists of candidates may not be nominated as candidates in elections to municipal councils) is chosen, members of territorial communities – permanent residents of administrative units of the territory of the Republic of Lithuania (citizens of the Republic of Lithuania and other permanent residents) – should have the possibility of standing for election to the councils of the respective municipalities even without support of any political party while being included as candidates for members of municipal councils in some non-political-party list. Having chosen such (proportional) system of elections to municipal councils, it is necessary to ensure the possibility for the members of territorial communities to implement their passive electoral right by being included in other lists, not only those of political parties (and individually, if the legislature so decides). Such unions (associations) that must have, under the law, the right to draw up the said lists may be formed for the period of particular elections to municipal councils, but they may also operate continuously if this is established by means of a law.

The legislature has broad discretion to establish the requirements that should be met by the said lists drawn up not by political parties, *inter alia*, to stipulate how many persons must be included in such lists, whether anyone should support such lists in order to register them for an election to municipal councils and if so, how many persons must do that, the time when such lists must be submitted for registration, under what procedure this must be done, etc.

… the legislature, when stipulating, by means of a law, that members of territorial communities may exercise their passive electoral right of electing members of municipal councils by being included in non-political-party lists, must pay regard to the obvious circumstance that elections are a political process. Therefore, a legal regulation where not every union (established not for any type of objectives) (*inter alia*, not every association, public organisation, community) is allowed to make a list of candidates for members of municipal councils and submit it for registration for an election to municipal councils would be constitutionally justifiable. In this context, it is worth noting that the Constitution consolidates not only the institution of political parties, but also that of political organisations (Paragraph 3 of Article 35, Paragraph 2 of Article 44, Paragraph 2 of Article 83, Paragraph 2 of Article 113, Paragraph 1 of Article 114, and Article 141 of the Constitution); although the notions "political party" and "political organisation" are close, they are not identical.

The legislature, when paying regard to the Constitution, may also establish, by means of a law, certain criteria related to the territory of activity of unions (which are not political parties) that draw up particular lists and submit them for registration to an election to municipal councils (for example, that the said activity should cover the respective administrative units of the territory of the Republic of Lithuania).

The representatives of the Government; the discretion of the legislature to establish the powers of the representatives of the Government and the requirements for persons who wish to hold the office of a representative of the Government (Paragraphs 2 and 3 of Article 123 of the Constitution)

The Constitutional Court's ruling of 13 August 2007

The duties of the representative of the Government are *expressis verbis* enshrined in the Constitution. Paragraph 2 of Article 123 of the Constitution prescribes that the observance of the Constitution and laws and the execution of the decisions of the Government by municipalities are supervised by the representatives appointed by the Government, and Paragraph 3 of this article prescribes that the powers of the representatives of the Government and the procedure for the execution of their powers are established by means of a law. The Constitutional Court held that, under Article 123 of the Constitution, the representative of the Government is a subject who exercises supervision over municipalities, acts in the name of the Government, and is subordinate to it (ruling of 18 February 1998). The establishment of the powers of the representative

of the Government is left for the legislature (of course, in doing so, the legislature must pay regard to the Constitution, *inter alia*, the mission of the constitutional institution of the representatives of the Government and the functions of the representatives of the Government, which are consolidated in the Constitution); in this area, the legislature has broad discretion, it may establish very varied powers of the representative of the Government (ruling of 14 April 2006).

The legislature that has wide discretion to regulate the status and powers of the representative of the Government also has the discretion to establish the general and special requirements for the persons who seek this office.

However, it needs to be emphasised that the legislature not only may, but also must establish such a legal regulation that would permit verifying the reliability – loyalty to the State of Lithuania, reputation, etc. – of those persons who seek to hold office in state service.

In this context, it needs to be noted that the jurisprudence of the Constitutional Court has always been based on the principled position that the government representative must have the confidence of the Government; if the representative of the Government loses the confidence of the Government, he/she may be dismissed from office (ruling of 14 April 2006).

Internal structural subunits of municipal councils (Paragraphs 1 and 4 of Article 119 of the Constitution)

The Constitutional Court's ruling of 31 March 2010

… under the Constitution, *inter alia*, Paragraphs 1 and 4 of Article 119 thereof, municipal councils, when implementing the right of self-government guaranteed by the Constitution, may form their internal structural subunits.

In this context, it needs to be noted that, under the Constitution, internal structural subunits of municipal councils may not be treated as ones through which the right of self-government is implemented by territorial communities; therefore, the legislature, while regulating the relationships of local self-government, is not allowed to establish any such a legal regulation under which internal structural subunits of municipal councils or individual municipal officials would be equated to municipal councils or would replace municipal councils, *inter alia*, in the aspect that they would take over the execution of certain powers assigned to the competence of municipal councils as representations of the residents of particular territories. Internal structural subunits of municipal councils must help to ensure the work of municipal councils by presenting recommendations to municipal councils on the issues assigned to the competence of municipal councils, etc.; however, they may not adopt final decisions on the issues assigned to the competence of municipal councils.

… under the Constitution, internal structural subunits of municipal councils may not be treated as the executive bodies accountable to municipal councils, nor may they be treated as other municipal institutions that are established by municipal councils and have authoritative powers.

The discretion of the legislature to choose the manner of establishing the results of elections to municipal councils and of distributing mandates, as well as to consolidate electoral thresholds

The Constitutional Court's ruling of 11 May 2011

The legislature, when regulating the relationships connected with the elections of municipal council members, has broad discretion to choose the methods for establishing the results of elections to an elective representative institution and for distributing mandates, and to consolidate the so-called election thresholds with respect to subjects implementing the passive electoral right, i.e. to stipulate that they may participate in the distribution of mandates only after polling a certain number of votes that is set by means of a law, where the said number of votes may be expressed as a particular percentage (known in advance) of the votes of the voters participating in an election or as a certain number of votes that is determined after calculating the votes of the voters who have participated in an election to a representative institution; as a rule, an election threshold is established in order to avoid a serious fragmentation into small groups in an elected

representative institution and to ensure its stability. However, the said discretion of the legislature is not absolute; the legislature must pay regard to the provisions – norms and principles – of the Constitution, *inter alia*, the constitutional concept of local self-government, as well as the principles of universal, equal, and direct suffrage, which stem from Paragraph 2 of Article 119 of the Constitution. The election threshold set by the legislature for electing a representative institution must not be too high, so that it does not create the preconditions for not reflecting the interests of different voters and for violating their right to participate in deciding questions of self-government through democratically elected representatives; the fundamental differences of election participants may not be ignored and the same election threshold for essentially different subjects implementing the passive electoral right may not be fixed, as well as a different election threshold for essentially analogous subjects implementing the passive electoral right may not be established, since, otherwise, *inter alia*, the principle of equal suffrage, consolidated in Paragraph 2 of Article 119 of the Constitution, would be violated.

The right of persons to stand for election as members of municipal councils; the right of the electorate to receive significant information about candidates for members of municipal councils, *inter alia*, about the fact that a candidate was found by a court to be guilty of a criminal act (Article 25, Paragraph 2 of Article 34, Paragraphs 2 and 3 of Article 119 of the Constitution)

The Constitutional Court's ruling of 17 November 2011

In interpreting the provisions of Paragraph 2 of Article 34 of the Constitution, the Constitutional Court has held that the right of a person, which is guaranteed by the Constitution, to stand for election as a member of a municipal council under the conditions provided for by means of a law is an important constitutional right of a person (ruling of 11 May 2011); the provision "The right to stand for election shall be established … by the election laws" of Paragraph 2 of Article 34 of the Constitution means that, under the Constitution, the legislature has the powers to establish in the election laws such requirements (conditions) for a person who may stand for election that are constitutionally justifiable (ruling of 25 May 2004).

It needs to be noted that the right of a person to stand for election as a member of the municipal council under the conditions provided for in the law is also consolidated in Article 119 of the Constitution. Paragraph 2 of Article 119 of the Constitution provides, *inter alia*, that members of municipal councils are elected on the basis of universal, equal, and direct suffrage, whereas the provision of Paragraph 3 of the same article, whereby the procedure for the organisation and activities of self-government institutions are established by means of a law, also means that the legislature is under the duty to lay down, by means of a law, the grounds and procedure for organising elections; the formation of the political representative institutions that are provided for in the Constitution is subject to special requirements; the legislature is under the duty to establish such a legal regulation that would ensure the transparency of the electoral process, which is a necessary precondition for the trust of voters in the representative institution (ruling of 11 May 2011).

Elections, including elections to municipal councils, are a political process. The electoral rights (both active and passive ones) are closely related to the right of citizens of the Republic of Lithuania, entrenched in Article 33 of the Constitution, to participate in the governance of their state (ruling of 9 February 2007), which is implemented, *inter alia*, by participating in forming political representative institutions (ruling of 11 May 2011).

… the provision of Paragraph 2 of Article 34 of the Constitution, whereby the right to stand for election is established by the election laws, the provision consolidated in Paragraph 2 of Article 119 of the Constitution, whereby the members of municipal councils are elected on the basis of universal, equal, and direct suffrage, and the provision consolidated in Paragraph 3 of the same article, whereby the procedure for the organisation and activities of self-government institutions are established by law, give rise to the duty of the legislature to establish, by means of a law, the procedure for elections of municipal councils, *inter alia*, such a procedure that would define what information must be made public to voters by persons seeking to

stand for election as members of municipal councils, as well as the concrete requirements how such information must be provided so that voters would be informed in a proper way.

It also needs to be noted that, in order to ensure the right of citizens to participate in the governance of their state, as consolidated in Paragraph 1 of Article 33 of the Constitution, *inter alia*, through democratically elected representatives, the legislature must create the preconditions for reflecting the will of voters, *inter alia*, the preconditions for ensuring the transparency of the electoral process and fair competition among subjects exercising their passive electoral right, as well as the publicity of the information, important to voters, regarding these subjects.

… one of the foundations of an open, just, and harmonious civil society and a state under the rule of law is the constitutional right to receive information, which is consolidated in Article 25 of the Constitution.

The Constitution guarantees and protects the interest of the public to be informed (*inter alia*, the rulings of 8 July 2005, 19 September 2005, 29 September 2005, and 21 December 2006). The constitutional right to receive information is an important precondition for implementing various rights and freedoms of a person, which are consolidated in the Constitution (ruling of 21 December 2006).

Thus, when interpreting the provisions of Paragraph 2 of Article 34 and Paragraph 2 of Article 119 of the Constitution in conjunction with the right of the public to receive information, which is entrenched, *inter alia*, in Article 25 of the Constitution, it needs to be noted that the interest of the public to be informed assumes especial importance in the process of elections to political representative institutions, *inter alia*, elections to municipal councils. During the electoral process, real possibilities must be created for persons implementing the active electoral right, who decide on the eligibility of a candidate to be a member of the municipal council, to receive information about the major facts of such person's life, which may be of significance when representing the interests of voters and handling public affairs. The information about the fact that a person seeking to stand for election as a member of the municipal council by an effective court judgment (decision) was found guilty of a criminal act should also be viewed as information significant to the electorate.

It needs to be noted that, when consolidating the duty of a candidate to make it public if he/she was found by a court to have been guilty of a criminal act, the legislature should set concrete requirements as to how such information must be presented in a proper manner and by not misleading voters, *inter alia*, that a candidate must indicate when, as a result of which precisely criminal act, and by an effective court judgment (decision) of which country he/she was found guilty.

[…]

The fact that the act, as a result of committing which a person had been found guilty by a court, was later, under the criminal laws of the Republic of Lithuania, declared not criminal (was decriminalised) does not mean that such a person may be regarded as having not committed any criminal act in the past. It also needs to be noted that, in cases where a person was found guilty, by a court of a foreign state, of an act that is not and was never regarded as a criminal one under the law of the Republic of Lithuania, or in cases where the fact that persons are held criminally liable for such an act is deemed political persecution, this means that the circumstance that such a person was found guilty of such an act is an important fact of his/her life.

Thus, the information about the fact that persons seeking to stand for election as members of municipal councils were found by a court to have been guilty of the aforementioned criminal acts – even in cases where such acts were later decriminalised, as well as in cases where such acts, as a result of which such persons were found guilty by a court of a foreign state, are not and were never regarded as criminal ones under the law of the Republic of Lithuania, or where the fact that persons are held criminally liable for such acts is deemed political persecution – is important to voters in deciding on the eligibility of the candidates for elective positions, as this gives the possibility of being aware of important facts of the life of the candidates, which may be of significance when representing the interests of voters and handling public affairs. …

[…]

… when interpreting the provisions of Paragraph 2 of Article 34 of the Constitution, the Constitutional Court has also held that, under the Constitution, in the course of regulating electoral relationships by means of a law, *inter alia*, an equal passive electoral right of all candidates must be ensured …

[…]

… when fulfilling its duty, which stems from the provisions consolidated in Paragraph 2 of Article 34, Paragraphs 2 and 3 of Article 119 of the Constitution, to lay down, by means of a law, the grounds and procedure for organising elections to municipal councils, the legislature has broad discretion, *inter alia*, to stipulate what information regarding candidates for members of municipal councils must be provided for voters by institutions organising elections and in what way the said information must be presented. However, this discretion of the legislature is not absolute. When stipulating what information regarding candidates must be provided by institutions organising elections and in what way that information must be presented, the legislature is obliged to ensure the imperatives stemming from the Constitution, *inter alia*, an equal passive electoral right, the principle of fair competition in elections among subjects implementing the passive electoral right, as well as the principles of transparency of the electoral process and justice. Thus, when consolidating the duty of institutions organising elections to provide for voters the information about the fact that a candidate was found guilty of a criminal act, the legislature should stipulate how such information must be properly presented so that voters could decide on the eligibility of the candidate concerned.

[…]

… the legislature must stipulate that voters must be informed about the especially important facts of the life of a candidate for a member of a municipal council (*inter alia*, that such a person was found by a court guilty of an act that, under the law of the Republic of Lithuania, is regarded as criminal), which may be of essential significance to voters in deciding on the eligibility of the candidate for the elective position, by, *inter alia*, respectively indicating such facts on the poster of a candidate or on the poster with a list of candidates issued by the electoral commission.

[…]

It needs to be noted that there is an essential difference between, on the one hand, the criminal acts that were later decriminalised, the criminal acts that are regarded under the law of a foreign state as criminal, but are not and were never regarded as criminal under the law of the Republic of Lithuania, or the fact that persons are held criminally liable for such acts is deemed political persecution, and, on the other hand, the acts that are regarded as criminal under the law of the Republic of Lithuania. Therefore, it is not allowed to establish the duty for institutions organising elections to present on the poster of a candidate or on the poster with a list of candidates the aforementioned essentially different information in the same manner in order not to create the preconditions for misleading the voters, since, otherwise, the said essentially different information regarding candidates could create an equally negative impression about the candidates concerned; this would impede the possibility for voters to decide rightly on the eligibility of the candidate for the elective position.

The incompatibility of the office of a member of a municipal council with another office

The Constitutional Court's ruling of 17 November 2011

… the Constitution, *inter alia*, the principles of the organisation and activities of self-government institutions, which are laid down in Paragraphs 1 and 4 of Article 119 thereof, gives rise to the duty of the legislature to stipulate that members of municipal councils may not take up in the respective municipal institutions such positions while holding which they would have the powers to decide the questions related to the adoption and implementation of decisions of the municipal council, would be accountable to the municipal council and/or directly subordinate to certain members of the municipal council as, for example, the mayor. Otherwise, the principles of the equality of the legal status of the members of municipal councils, the accountability of municipal institutions to the municipal council that forms them, and the supremacy of municipal councils over the municipal institutions that are accountable to them, which are entrenched in Paragraphs 1 and 4 of Article 119 of the Constitution, would be violated.

The specific nature of the activities of municipal politicians that is important for the legal regulation governing their work remuneration (Paragraph 1 of Article 48 of the Constitution)

See 2. The constitutional status of persons, 2.4. Economic, social, and cultural rights, 2.4.1. Economic rights, 2.4.1.2. The right to work, 2.4.1.2.4. The right to receive fair pay for work, the ruling of 30 April 2013.

The specific nature of the activities of municipal politicians that is important for the legal regulation governing the organisation of their work, rest, and annual paid leave (Article 49 of the Constitution)

See 2. The constitutional status of persons, 2.4. Economic, social, and cultural rights, 2.4.1. Economic rights, 2.4.1.2. The right to work, 2.4.1.2.6. The right to rest and leisure, as well as to annual paid leave, the ruling of 30 April 2013.

The autonomy of municipal budgets

The Constitutional Court's ruling of 11 June 2015

Paragraph 1 of Article 121 of the Constitution prescribes that municipalities draft and approve their budgets.

In its ruling of 14 January 2002, the Constitutional Court held that, under the Constitution, the autonomy of municipal budgets is an important aspect of the constitutional principle of the independence of municipalities within the limits of their competence defined by the Constitution and laws and that the independence of municipalities in the sphere of the budget is not absolute.

Financing the functions performed by municipalities

The Constitutional Court's ruling of 11 June 2015

… the legislature has the discretion to choose the priorities in funding municipalities, as well as the ways and forms by which the state supports municipalities, including the way of the calculation of the funds of the state budget meant for municipalities and the manner of the allocation of such funds; however, in doing so, the legislature must pay regard to the Constitution, *inter alia*, the imperatives (consolidated in Article 120 and Paragraph 1 of Article 121 of the Constitution) of ensuring the funding required for a fully fledged functioning of self-government and for the implementation of municipal functions, and must observe the constitutional principles of responsible governance and proportionality, according to which the funding of municipal functions must be adequate to the extent of such functions. These constitutional imperatives give rise to the duty of the legislature to establish such a legal regulation whereby, in proportion to the requirement for funding the functions performed by municipalities, funds for financing municipal functions would be allocated, *inter alia*, by transferring certain taxes (share thereof) to municipalities, where account is taken of the resources, as well as the material and financial capacity of the state and society.

After the legislature imposes the personal income tax as one of the sources for fulfilling the functions of the state (municipality) and decides that this tax (share thereof) is allocated to municipalities in order to fund their activities, Article 120 and Paragraph 1 of Article 212 of the Constitution, as well as the constitutional principles of responsible governance and proportionality, give rise to the duty of the legislature to establish such a legal regulation by which the funds received from the personal income tax, as well as all from other funds allocated for financing municipal functions, would be distributed in proportion to the extent of the functions performed by municipalities.

The Constitutional Court has noted that, if the extent of the functions assigned to municipalities is changed, the legislature may and, in some cases, even must correspondingly amend (either increase or decrease) the funding of municipal functions (ruling of 8 July 2005).

… the Constitution, *inter alia*, Article 120 and Paragraph 1 of Article 121 thereof, gives rise to the duty of the legislature to establish such a legal regulation whereby the funding of municipal functions could be

correspondingly amended (either increased or decreased) not only in the cases where the extent of municipal functions is changed, but also when the need for funds undergoes changes due to other objective reasons as, for instance, demographic or economic changes.

… under the Constitution, *inter alia*, under Article 120 and Paragraph 1 of Article 121 thereof, as well as the constitutional principle of the equality of the rights of persons, the legislature, in an effort to ensure the funding required for a fully fledged functioning of self-government and the implementation of municipal functions and by taking into account the differences in the social and economic development of regions, may choose a model for equalising the financial capacity of municipalities and establish a mechanism for such equalisation. In doing so, the legislature must pay regard to the Constitution, *inter alia*, the constitutional principle of a state under the rule of law, whereby the legal regulation laid down in laws and other legal acts must be clear, comprehensible, and coherent, and must observe the constitutional principle of responsible governance, by which the state institutions and officials must properly exercise the powers conferred on them according to the Constitution and laws.

According to Article 120 and Paragraph 1 of Article 121 of the Constitution, when they are interpreted in conjunction with the constitutional principle of a state under the rule of law, which encompasses the requirements of legal certainty, legal clarity, legal security, and the protection of legitimate expectations, and in conjunction with the constitutional principle of responsible governance, the legislature must establish a clear procedure for calculating the funds allocated to municipalities, where such a procedure would ensure the funding required for a fully fledged functioning of self-government and for the fulfilment of municipal functions, and would also ensure the independence and freedom of the activities of municipalities within their competence defined by the Constitution and laws.

The legal regulation governing the remuneration of municipal politicians (Paragraph 1 of Article 48 and Paragraph 3 of Article 119 of the Constitution)

The Constitutional Court's ruling of 29 May 2019

… the provision "Everyone … shall have the right … to receive fair pay for work" of Paragraph 1 of Article 48 of the Constitution should be interpreted in conjunction with Paragraph 3 of Article 119 of the Constitution. Under Paragraph 3 of Article 119 of the Constitution, the procedure for the organisation and activities of self-government institutions is established by law.

It should be noted that, under Paragraph 3 of Article 119 of the Constitution, while regulating the procedure for the organisation and activities of municipal councils as political representative self-government institutions, the legislature also has the discretion to establish the legal regulation governing the organisation of the work and the system of the remuneration of municipal council members who are elected, *inter alia*, to organise the activity of the respective municipal councils, implement the related powers, and represent the respective municipalities (as, for instance, persons holding the office of mayor or deputy mayor as provided for by law). When the amount of the remuneration of mayors (deputy mayors) is established by means of a legal regulation, regard must be paid to the imperative of fair pay for work, as laid down in the Constitution, *inter alia*, Paragraph 1 of Article 48 thereof, as well as to the circumstances leading to the necessity to differentiate the amount of this remuneration.

The Constitutional Court has noted that, in addition to the number of residents living in their territory, municipalities can, *inter alia*, considerably vary in their size and the scope of issues assigned to their competence due to the significance and complexity of these issues; thus, the scope of the activity of municipal politicians and the extent of their responsibility may also vary due to the particularities of the municipality concerned; therefore, if the amount of the remuneration of mayors (deputy mayors) is differentiated by means of a legal regulation, account must also be taken of this specific nature of their activity (ruling of 30 April 2013).

… the imperative of fair pay for work, as consolidated in Paragraph 1 of Article 48 of the Constitution, gives rise to the requirement for the legislature, when differentiating the amount of the remuneration of municipal council members who are elected, *inter alia*, to organise the activity of the respective municipal

councils, implement the related powers, and represent the respective municipalities (as, for instance, persons holding the office of mayor or deputy mayor as provided for by law), to draw on the clear and objective criteria laid down by means of a law, which constitute an essential element of the right to receive fair pay for work. Regulating the system of remuneration paid to these persons, the legislature has broad discretion to choose and lay down, in laws, the criteria for differentiating the amount of their remuneration. The amount of the remuneration of municipal mayors and deputy mayors may be differentiated in view of the number of municipal residents; however, the differentiation of the amount of the said remuneration according to this sole criterion may not violate the constitutional imperative of fair pay for work. In exercising its discretion and taking into account the particularities and differences that exist among municipalities and have influence on the scope of the activity of mayors and deputy mayors and on the extent of their responsibility, the legislature may also provide for other objective criteria determining the amount of the remuneration of municipal mayors and deputy mayors.

[…]

Thus, under the Constitution, *inter alia*, Paragraph 1 of Article 48 thereof, exercising its discretion, granted under Paragraph 3 of Article 119 of the Constitution, to establish the system of remuneration paid to municipal council members who are elected, *inter alia*, to organise the activity of the respective municipal councils, implement the related powers, and represent the respective municipalities (as, for instance, persons holding the office of mayor or deputy mayor as provided for by law), *inter alia*, to regulate the amount of their remuneration, the legislature is not allowed to establish such a legal regulation under which the amount of the remuneration of municipal mayors (deputy mayors) would be the same despite the fact that the complexity of their functions, the scope of their activity, the nature of their work, and the extent of their responsibility for carrying out the said functions considerably differ due to the particularities of the municipalities concerned, *inter alia*, differences in their size and the number of their residents, as well as their legal status.

10.3. LOCAL GOVERNANCE

Local governance is the performance of the functions of state governance in particular localities (Paragraph 1 of Article 123 of the Constitution)

The Constitutional Court's ruling of 18 February 1998

The constitutional provisions on state governance in particular localities are formulated in Paragraph 1 of Article 123 of the Constitution: "At higher-level administrative units, governance shall be organised by the Government according to the procedure established by law."

Local governance is the fulfilment of the functions of state governance (i.e. the functions of executive power) in particular localities, i.e. the respective administrative units. The functions of local governance are, as a rule, performed by officials appointed by the central authority (or by institutions formed by the said officials) who most generally act in the name or on the instructions (authorisation) of the central authority.